JUSTICE

IN A DEPRESSED AREA

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IN A DEPRESSED AREA

A Critical Study

by

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BARRISTER-AT-LAW

with a Foreword by the

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FORMERLY DEAN OF DURHAM

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THIS BOOK IS DEDICATED
TO THE COURAGEOUS AND
INDEPENDENT WORKERS OF
THE TYNESIDE

"One of the most fundamental social interests is that law shall be uniform and impartial. There must be nothing in its action that savors of prejudice or favor or even arbitrary whim or fitfulness."

CARDOZO

FOREWORD

In introducing this rather controversial treatise upon Justice in a Depressed Area, I ought frankly to state that I am not conversant with all the facts which the author adduces in support of his case, nor do I wholly agree with the judgments which he passes upon the social and legal conditions in the counties of Durham and Northumberland. But I feel a profound sympathy with the working men, perhaps especially with the miners, whom I know best, and I welcome the opportunity of bringing their grievances, whether actual or even in some degree imaginary, before the public, not in the North-Eastern area only, but all over England. For, if ever men have deserved well of their country, the miners at the present time may claim an eminence in such desert. They risk their lives, when they are at work, every day in the service of their fellow citizens; they receive a wage inconsiderable in view of the profits which the mine-owners have amassed in past years; many of them have been thrown out of work, through no fault of their own, by the failure of the industry through the depreciation in the value of coal; and, during their years of enforced idleness, they have kept themselves singularly free from serious crime, or indeed from any offence against the Law. Distressing indeed, and even humiliating, is the spectacle of sturdy young men standing by scores on the roadsides in the county of Durham, all waiting, and hoping against hope, for the chance of employment. Whatever it is possible to

do for the alleviation of their distress and the encouragement of their self-respect it is well worth doing as a primary obligation of civic duty.

It is true, I believe, that the mine-owners to-day are a high-minded and generously-disposed body of employers. But history exercises a powerful influence upon human affairs, even when the historical facts which justify the influence have, in a large measure, passed out of remembrance, and there can be no doubt that the miners, even more than the working class generally, possess a valid historical grievance. It is always unfair, as it is unwise, to judge one age by the moral standard of another. But no enlightened citizen to-day can study without a feeling akin to shame the conditions of labour in the North-East and indeed in some other parts of England a century ago. Hannah More relates that in the Mendip villages, one of which was popularly known as Botany Bay, or Little Hell, the wages paid to labourers were a shilling a day; and in another as many as two hundred people were crowded into no more than nineteen houses, or hovels. In a passage quoted by Mr. and Mrs. Hammond in their book on *The Town Labourer* she says: "We have one large parish of miners so poor that there is not one creature in it who could give a cup of broth, if it would save a life." The residents in the county of Durham can never forget that until 1815 no inquest was ever held after explosions in the mines. But in that year the Vicar of Jarrow, the Rev. John Hodgson, published an account of an accident by which ninety-two of his parishioners had lost their lives in the

village of Felling, and it was as a result of his appeal that Sir Humphry Davy was invited to report upon the means of preventing explosions in mines, and he then invented the Safety Lamp.

In the treatise which I am considering, there are some few points about which I feel some reasonable doubt. I cannot indeed deny that the working class is everywhere strongly, and even strangely, critical of "nobility as reflected in titles." They do not believe, and I do not know why they should believe, that "a person with a title is a more honourable, or a more able person than a commoner," but I have not observed ill-feeling at the dignified ceremonial of the Assizes in the great cities of the provinces, and I rather suspect that the reception accorded to His Majesty's Judges upon their arrival in a great provincial city, their official attendance at Divine Service in the cathedral or parish church, and even the formality of proceedings in the Courts themselves, make a considerable impression upon the mind of the populace. The arrival of the judges, whose regular sphere of work is London, creates, I think, a sense not only of authority, but of impartiality, in the administration of the Law. Nor is it altogether a loss that differences between the employers and the employed, like other social differences, should not be too frequently, or too rapidly, brought into Courts of Law. "The Law's delay," in Shakespeare's phrase, may not be an evil, but may rather be a blessing, if it leaves time for efforts of compromise or conciliation before an action in a Public Court tends to inflame bitter feeling on

both sides. But it is at least possible, and even probable, that working men, in the North of England especially, would like to be tried, if not exclusively, yet in some measure, by persons of their own county and their own class. The writer of the treatise has paid a well-merited tribute of respect to my friend, the late Sir Francis Greenwell, who was so long a County Court Judge in Durham; and I am satisfied that Sir Francis's local knowledge, as well as his personal character, was an element in his successful administration of the Law. For, if there is any lesson which I have learned in North-Eastern England, it is the value of personal contact. Half the ill-feeling in the world of industry has arisen because employers have in some degree lost the habit of association with the men and women who are employed in their works. The great combines, which have absorbed the management of so many local industries, may increase the profits of mines and factories, but they create an unhappy feeling of estrangement between the men who do the hard work and face the daily risks and the men who, living in safety, perhaps at a distance, draw to themselves so large a share of the profits, which are won by the self-sacrificing labour of their employees.

It were well always to provide that officials who are concerned with the administration of the Law should possess some knowledge of local habits and feelings, and even of the local language. I know I have travelled in a train with a body of working men coming home from a football match, and I have found myself unable to understand more than a very few words

which they spoke, although I knew they were talking about the match. But the principal object of all reforms in the administration of justice, throughout the provinces, no less than in the metropolis, must be to maintain the deeply rooted respect of all English men and English women for the Law. I do not think I am wrong in saying that such respect for the Law is more strongly and more widely felt in Great Britain than in any other European country. It is so easy to criticize the administration of justice. Some clergymen have declined to be tried by secular Courts, and I suppose the workers might almost equally well decline to be adjudged by Courts in which the judges or magistrates are rich men. But the vital principle of ready obedience to the Law must never be sacrificed in any region of the country, and perhaps above all in the depressed areas.

It is my hope that this treatise will be published, as I think it deserves to be studied. The problem of industrial life is ever changing, as the conditions of life among the working people change. There may still be room for Boards of Conciliation, because they represent the essential principle no less applicable to nations than to individual citizens, that the true Christian method of settling disputes lies in arbitration. But arbitration will perhaps never wholly supplant the formal proceedings which men, and nations of men, are apt so wrongly to regard as ensuring the supremacy of justice. It is necessary therefore that the poor should not be set, and should not feel themselves to be set, at any disadvantage in comparison with the rich.

The confidence of the poor, if it has been shaken, may be restored by such measures as are advocated in the treatise; by respect for judicial authority; by the diminution of legal costs, as, if cases, which are now taken to London, can be equally well tried at home; by due regard to local conditions; by reforms in the Workmen's Compensation Acts, and by a more equitable spirit in the provision of the Dole; in a word, by all measures which assert and ensure the equality of rich and poor alike before the Law, and which enhance the proud confidence of British citizens in their nation and their Empire, as representing the highest ideal of liberty and equality, of justice and honour.

J. E. C. WELLDON

October 1935

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INTRODUCTION

In most English books on legal matters the author proclaims himself a Londoner and adopts an academic and lofty attitude towards the problems he is seeking to solve. In the present case the author admits to being a provincial and he purposely attempts to maintain a practical and working-class attitude in dealing with his subject. Personal contact with the misery and hardship which exist to-day in industrially depressed areas, does not foster a feeling of complacence or a belief that perfection has been reached in our legal institutions and it may well be that the prosperous reader in South-country towns will think that the writer has been over-critical in his description of provincial justice. On the other hand, hard-pressed workers in depressed areas will probably think that the writer has understated the hardships and injustices to which working men are subjected. The writer's answer to both types of critic is that he has endeavoured to present an accurate picture of provincial justice without fear and without favour and that it is in the hope that the subject may be further explored that he has ventured to put pen to paper.

Opinion differs widely upon the importance of law and legal administration. The average middle-class layman appears to think that it is a minor factor in the welfare of the community. Eminent lawyers take a contrary view. Mr. Justice Cardozo, a Judge of the Supreme Court of the United States of America,

describes the necessity for uniformity and impartiality in a legal system as "one of the most fundamental social interests." But, whichever view is accurate, education and the spread of general information by newspapers are focussing the attention of the working man on the problems of administering the law as well as on the making of laws and in the writer's view it will not be long before he regards the problems of administering the law as of the same importance as the making of laws.

At the present time the administration of civil justice in England is in the hands of a very small number of judges (about a hundred in all) who are recruited from the upper and middle classes. This fact, coupled with a wider personal discretion which is being given to tribunals, creates the appearance of a legal despotism, and moreover a despotism controlled by a small and unrepresentative class. A main theme of this book is to show the advantages which are likely to result from composite tribunals in which working-class representatives take a share in administering civil justice.

Other points upon which stress has been laid are—

(1) The need for decentralization of justice which would cheapen and render more efficient justice in the provinces.

(2) The need for protection of the able and independent worker whose rights and liberty are at present crushed between the interests of privileged corporations and combines and the needs of incompetent and thriftless workers.

(3) The necessity for drastic reduction in the cost of litigation; so that persons of moderate means may be able to seek the protection of the Courts without the risk of ruin.

The difference between justice as administered in the London Commercial Court and justice as administered in provincial Courts is staggering. In the London High Court, cases are divided into classes and allocated to the various Divisions of the High Court. A Judge who has had experience in the type of case to be tried usually presides and, apart from expense and possibly delay, there is very little ground for serious complaint. In country districts far from London, methods of administering justice which are very little advanced from those of feudal times still exist, while in the industrial towns which have grown up round factories, the administration of justice in the lower Courts is affected by the strong class-feeling between the workers and the employers' agents. In the Civil Courts of Northern industrial areas persons are appointed to act as Judges who have lived the whole of their lives in London residential suburbs and are unfamiliar with North-country ways and with North-country industries, and these inexperienced persons are required to adjudicate in every form of dispute and not infrequently to use their own knowledge and experience of local conditions. The difficulties of legal administration in many industrial areas are, at the present time, accentuated by the extreme poverty of a large section of the population and by the large volume of new and positive laws and regulations which have been brought into force in recent years.

The writer has attempted no detailed scheme of reform, but here and there he has suggested lines along which reforms should proceed. He would emphasize the fact that his criticisms are in no way directed against individual judges or magistrates, all of whom according to his experience act honestly according to their own views of the manner in which justice should be administered.

Lastly the writer would like to acknowledge the help of many friends and the use that he has made of the books and documents referred to in the text. The typescript of this book has been read by two officials of craftsmen's trade unions who have great experience of litigation from the working man's point of view and they state that they agree with almost all the views expressed.

JUSTICE IN A DEPRESSED AREA

CHAPTER I

SOME ASPECTS OF WORKING-CLASS JUSTICE

(*a*) THE WORKERS' NEED FOR PROTECTION AGAINST INJUSTICE

In the days when the doctrine of *laissez-faire* flourished in England there was probably sound reason in the view of the law-abiding Englishman that law and Law Courts were matters unworthy of his interest. Even to-day, one can understand the attitude of citizens of placid South-country towns who take a similar view, but in the small North-country towns the situation is radically different and the writer sets down in this chapter his impressions formed by regular visits to some of these towns over a number of years and frequent meetings and discussions with working men who live in them.

An outstanding feature of the smaller North-country towns is the row upon row of small houses and the absence of larger houses. It is not the poverty which strikes one so much as the "dead levelness" of the houses which is reflected in the attitude and outlook of their inhabitants. The Poor Law Acts, the Unemployment Insurance Acts, the Rent Restrictions Acts, the National Health Insurance Acts, the Workmen's Compensation Acts, and many other Acts of Parliament

play a very real part in the lives of these people and the law and its administration are vital matters to them. Although the Acts mentioned (as well as many others) have been passed mainly for the benefit of the poorer classes, their attitude towards law is frequently one of bitterness and hostility. Very few of them know much about the principles upon which the law is founded, nor have they much opportunity of learning about it. A certain subversive but very able element makes clever use of the many anomalies which undoubtedly exist to disparage the whole system. In a number of evening classes on legal subjects the writer has found that members of the classes tend to see, as the courses progress, that there is moral principle and sound sense underlying most of English law but it is difficult, if not impossible, to dissipate the conviction that the "governing classes" make a show of passing beneficial legislation but purposely prevent its efficient operation.

Before dismissing such views as utterly untenable, it is necessary to consider the workers' point of view and the evidence upon which it is based. In the first place the "governing classes" in contact with them are the officials who administer the law, although the term includes all those still higher up in the present social structure. These officials include Town Clerks (officials usually more distinguished for administrative zeal than for legal knowledge), the police and the minor officials of the central and local government offices.

None of these classes of official except the first named,

has any training in law and their administration of the general law and social legislation is often harsh, unjust, and contrary to the principles of the law. At evening classes men and women, who have no means with which to employ solicitors, have asked the writer for gratuitous advice and in many instances, which have been cited, the conduct of officials has appeared tyrannous. The writer is anxious not to leave the impression that officials are consciously guilty of maladministration. The official in the depressed areas as elsewhere conscientiously attempts to apply the law effectively and the blame, if blame is to be attributed for maladministration, lies chiefly with Members of Parliament who are responsible for a system which fails to take sufficient account of the human frailties of officials, of their lack of legal experience and training and of the very strong group pressure to which they are or may be subjected in economically depressed areas.

An experienced business man or lawyer creating a trust for a number of elderly people would not place the administration in the hands of young and inexperienced men without any safeguards as to the manner in which they administered the trust. He would almost certainly entrust the administration to two or three experienced persons and would fetter their discretion by clear directions as to the manner in which the trust was to be administered. Moreover English law gives to the beneficiary of a private trust unrestricted powers to test his rights so that he is not at the mercy of trustees, however capable and experienced they may be.

Recent social legislation resembles closely an enormous trust in which the poor are the beneficiaries and administration is in the hands of government officials. Unless government officials are a race apart from ordinary mortals they are liable to the same faults as trustees and the safeguards which apply to the private trust are needed in the case of the public trust.

The following illustrations taken from administration of the law in connection with unemployed persons indicate the present condition of affairs. They are not intended to suggest bad faith on the part of any government official but to emphasize the difficulties which arise where comparatively young officials without legal training are given an unfettered discretion in dealing with the inhabitants of an economically depressed area.

(1) The writer was recently asked at an unemployed men's centre to help a man who had a sick child and was unable to obtain an allowance for extra nourishment. The man was on the "Means Test" and was receiving under the Unemployment Assistance Act the standard rate for a family of his size. His panel doctor had certified that the sick child required extra nourishment. An application by the man to the Unemployment Assistance Board's officer had been turned down. The case appeared to the writer to be a genuine one where the discretion given to the Unemployment Assistance Board's official ought to have been exercised and he asked a trade union representative to take up the case. As a result of the trade union official's efforts an extra allowance was immediately granted.

Within a few days of this occurrence the writer was

told by a worker's representative of an almost exactly similar case from another area and many more like cases could be collected. The disturbing feature of these cases is that the discretion appears to be exercised less upon the merits of the individual case than upon the power and reputation of the person putting forward the claim. With the existing system it could hardly be otherwise because a young and ambitious clerk who has little legal or judicial experience and an unfettered discretion cannot help being influenced by a very powerful and influential workers' representative and is therefore likely to regard a case so presented differently from a similar claim presented by a down-and-out worker.

(2) If one stands in the corner of the men's section of an Employment Exchange one sees before one a large compartment with a counter running across it. On the far side of the counter are a number of young clerks each dealing with claims. These young men are the product of modern secondary school education. Most of them have a good deal of book learning, can write a fair standard of essay and belong to a wholly different type from the unemployed men with whose claims they are dealing. The latter, at all events on Tyneside, are mainly men whose schooling finished at fourteen years of age, and they have little book learning but many of them have served long apprenticeships at skilled forms of manual labour. The following remarks of Mr. John Hill, Secretary of the Boilermakers' Society, give the North-country working man's view of his own status:

"I am a craftsman and don't take second place to a clergyman, a doctor or anybody else. A man with a craft looks upon it just as much as a profession as medicine or the Church." (*Newcastle Journal*, December 7, 1934.)

To entrust wide discretionary powers over craftsmen workers to young clerks without industrial experience seems likely to create a dangerous form of official despotism, and to be resented by the workers.

The writer attributes the outburst of indignation which led to the postponement of the operation of the Unemployment Assistance Act 1934 in January 1935 as much to the arbitrary and bureaucratic system which it introduced as to the reductions in rates of relief which in some cases it imposed. To find that a young official had arbitrarily cut two shillings off his weekly relief and added ten shillings to his neighbour's relief caused acute heart burning among self-respecting and independent workers who might, if the changes had been decided judicially by a composite tribunal, have been prepared to accept the changes with resignation.

The best method of ensuring just administration of the law would be strong, independent tribunals presided over by men who know the law, are not connected with officialdom and who will see that the workman gets his rights without involving him in ruinous expense. Workers' representatives on these tribunals are essential, not only to see that the workers' case is fully brought out but also to spread a knowledge of the basic principles and practice of the law among

the workers so that a belief in the justice of English law may be cultivated.'

The problem is far from an easy one because there are not in these towns many men who are sufficiently qualified and sufficiently independent of the official administrators to conduct impartial tribunals. At the present time there is an extraordinary assortment of tribunals administering civil and criminal justice, of which the Police Court is perhaps the best known to the worker and the most feared.

The existing Police Court procedure affords little or no protection to the worker and makes a poor show of justice. In a number of superficial ways it resembles High Court procedure but in vital principles, for example, the independence of the Judges, administration of justice according to law, giving of reasoned decisions and complete absence of back-door influence, there is a vast difference. Police Court procedure is dealt with elsewhere in this book. It suffices to say here that the average worker who wants protection has not the means to employ lawyers and the Court must be in a position to ascertain the facts, apply to them the law, and give a reasoned decision. At the present time the magistrates have no legal training and cannot give reasons for their decisions and officials dominate the Courts.

After unsuccessful proceedings in a Police Court the worker leaves the Court not knowing why he has been penalized or why his application has been refused and convinced that the Courts are merely a means by which the governing classes grind down working men.

Among thinking men of the working class the writer sees an appreciable movement towards the view that strong independent Courts administering both the general law and the social legislation are necessary if the worker is to attain that freedom and independence which most of them desire.

A very large proportion of Northern working men retain at present their conviction that the existing system cannot be improved and put their faith in wholesale Parliamentary reforms when their "people" have complete control of the legislature.

The writer has repeatedly asked himself: "Wherein lies the difference between Southern towns with their apparent freedom and independence and flourishing small industries and these small Northern towns with their uneasy tyranny and absence of small industries?" Three possible answers present themselves: Firstly, provincial justice in the North is more dominated by officialdom than it is in the South. Most Northern towns have grown up round large factories and justice in the local Police Courts with their untrained lay magistrates is contaminated by the class feeling arising from a factory system which recognized only two classes namely agents representing the masters, who ruled the large factories, and workmen who did as they were told. Secondly, there is not the same "dead-levelness" in Southern communities which is found in the small North-country towns and there is a strong professional middle class unconnected with official administration and able and willing to range itself on the side of the individual. Thirdly, a greater margin

of wealth enables the Southern citizen to hold his own with the official.

In the writer's opinion it is upon the lines of the modern statutory tribunal of the composite type that justice in the North should mainly be administered. These Courts usually consist of three members, firstly an independent lawyer Chairman who conducts the proceedings, informs the Court of the principles of law applicable and makes adequate notes of the evidence given and the grounds of the decision, secondly, two laymen from panels usually representing the employing and employed classes. The features of this type of tribunal which commend it to working men are fourfold. In the first place the composite nature of the tribunal, has the same popular appeal as a jury without many of the jury's drawbacks. In the second place, the representation of the worker on the tribunal gives to the working-class litigant a feeling that at all events one of the Court will understand his point of view. In the third place, the speed, cheapness, and absence of formality of the proceedings tend to prevent the rich and powerful litigant from obtaining the advantage which a skilful advocate can exercise in more formal proceedings. Finally, the giving of reasons for decisions, coupled with an appeal (which is or should be the practice in these Courts) preserves the rule of law and prevents legal tyranny.

The writer would also urge separation of the personnel engaged in administering justice from that engaged in central and local government. In London this state of affairs already exists, since High Court Judges, County

Court Judges and Stipendiary Magistrates are all persons who are entirely unconnected with central or local government and they do not take an active part in politics. Magistrates in the provinces are mainly persons who are actively engaged in some phase of local government or are actively propagandist on behalf of some sectional interest. Frequently a magistrate will publicly express partisan views on some political or social problem on one day and on the following day be sitting on the Bench dealing with the matters upon which he has expressed such views. Some magistrates even use the Bench for propagandist utterances, so that it would be extraordinary if working-class people had any belief in the independence or impartiality of magistrates. It is a commonplace contention among working-class students of law that until labour gets a majority in every magistrates' Court they will not be able to make the law what they wish it to be. Their view is that of Valentine in *The Two Gentlemen of Verona* when he says "These are my mates, that make their wills the law", and the suggestion that the magistrates ought to be independent and give decisions according to law and not according to their likes and dislikes is met by the retort that as long as colonels, colliery proprietors, and landowners form a majority of the magistrates, impartiality in the magistrates' Courts is impossible. There is a great deal of force in this contention. Occasionally one comes across a retired professor, a business man or a trade union official who has the judicial temperament and who approaches the issues before the Court objectively and impartially,

but this cannot be said of the majority of magistrates who sit in areas where class feeling is constantly in evidence.

The low standard of magisterial justice affects working-class opinion of justice in other Courts. Frequent questions about the composition of the High Court Bench are asked, e.g. How many High Court Judges are sons of Judges? or How many High Court Judges have been Conservative Members of Parliament? The inferences underlying these questions are in the writer's view unjustified, but it is extremely difficult to bring home to Northern working-class people that High Court justice and provincial justice as administered by magistrates are entirely different things. The average working-class man is never likely to see justice administered in London and he naturally measures judges by those who administer justice in his own locality.

If the administration of justice is to be respected by the workers some uniformity will have to be introduced and the system so arranged and organized that the average worker can obtain his legal rights without abnormal expense. Under the Unemployment Insurance Acts a worker can, without any expense to himself, have his rights settled by a Court of Referees consisting of an independent lawyer Chairman, a workers' representative, and an employers' representative and if there is disagreement among the members of the Court he has the right, without expense to himself, to a reconsideration of his case by the Umpire. On the other hand if the same worker has an accident which entitles him, or may entitle him, to workmen's

compensation the cost of proceedings will (as is shown elsewhere in this book) exceed £25 per party and unless the worker has a trade union or friends to back him his case cannot be properly presented before a single Judge who lacks industrial and medical experience. Appeal in such cases is far beyond the workman's means.

(*b*) THE PUNITIVE ASPECT OF LAW

One of the most remarkable features of the post-war depression has been the absence of serious crime among the unemployed workers. Statistics show that serious crime in the post-war years, has been substantially less than in the pre-war years, although in many Northern towns a very large proportion of the working population has been unemployed and the workers and their families have been living on the border of starvation.

The writer attributes this exemplary conduct in the Northern areas mainly to two circumstances: the first is that the Northern worker is an aristocrat among manual workers. He has a long tradition of craftsmanship and steady living behind him. Employers' representatives on Tyneside Courts of Referees frequently say of an unemployed man claiming benefit: "This man, his father, and his grandfather have worked for our firm, they have all been the steadiest of men and very good workers." It is this tradition of steadiness which has so far prevented the outbreaks of crime which might have been expected with so much distress and hardship.

The second circumstance is the steadying influence of the trade societies. There are in the Northern industrial areas (so far as the writer knows) no societies of the types of the French Croix de Feu or the German militaristic societies. The English trade unions are predominantly industrial societies and constitutional in their aims. The sympathetic attitude which the legislature has shown towards trade unionism by some of the Trade Union and Trade Dispute Acts is now bringing its reward.

It is in the writer's view highly undesirable that working people hard pressed by economic conditions should be subjected to dragooning or to any injustices which can reasonably be avoided. On both theoretical and practical grounds the policy of the law should be to adopt a protective rather than a punitive attitude; and justice should be administered in an atmosphere of reason unaccompanied by any display of force.

The Business of the Courts Committee (a body of London lawyers) apparently take the view that a show of force is desirable when they state "Nor do we underrate the *educational value* (the italics are the writer's) belonging to the spectacle of law and order embodied in the visit of the Red Judge with the accompaniment of the High Sheriff and of the attendant police and the ceremony thereby publicly manifested." It appears from this statement that it is the ceremony and the show of force which is the educative element, not the reasoned decisions of the Red Judge.

Scottish citizens do not have the educational advantages of the Red Judge procedure but respect for

the law in Scotland does not seem to be less than in Northern England and the standard of justice in Scotland seems as high or even higher than in Northern England.

There is also a practical aspect of the matter which deserves consideration. In the days before the war the strength of organized labour was greatly felt and feared and it was admitted on all sides that the future of Britain depended largely upon whether the leaders of organized labour adopted constitutional or unconstitutional methods. Leading public men expressed the hope that reason rather than force would be the means adopted for solving industrial differences. To-day the position is reversed; unemployment has depleted the ranks of organized labour and the workers' strength is weakened, but few people would deny that a time will come when they will regain their pre-war strength. In those days the ranks of organized labour will be filled with men who to-day are living under great hardship and in many cases labouring under a sense of great injustice which may or may not be justified. Surely now is the time for constitutionally minded persons to examine the way in which justice operates in the case of poor people and to insist that existing inequalities and injustices shall be righted. It will be of little use asking the workers to exercise reason and not force if at the present time force and not reason is used towards them. The writer feels confident that any reform by which it is brought home to the men and women of the distressed areas that the law is engaged in protecting the poor and the weak and not

punishing them will be a bulwark against the use of force and unconstitutional methods in the future.

The following impressions and facts are obtained from: (1) investigation of workers' circumstances (as a member of Courts of Referees) in more than ten thousand cases during the last five years; (2) several years' lecturing to workers under the auspices of the Workers' Educational Association; (3) experience as Chairman of the Advisory Committee of one of the larger unemployment centres on Tyneside.

In the Courts of Referees the independent lawyer Chairman has the assistance and advice of local trade union leaders and local employers' representatives and it is probable that this combination gets as near the truth regarding the workers' efforts to find employment and their economic circumstances as is possible, although the distress in the homes is not seen in the way in which clergymen, social workers and doctors see it. In about 90 per cent of the cases before these Courts the decisions are unanimous.

The Courts of Referees sit in local halls without protection of any kind and throughout the writer's experience, no force or protection has ever been necessary. Adverse decisions are accepted with extraordinary stoicism, although cases decided adversely take away from a claimant his only regular means of livelihood. A typical case which shows the loyalty of the Northern working man towards a fair judicial process was one in which an elderly shipyard worker who had worked all his life in shipyards became chronically unemployed about 1927. At that time he

had paid contributions into the Unemployment Fund for about fifteen years, but, having some savings, he (like many of the better types of worker) decided to attempt to find further work without queueing up outside a Labour Exchange, and until his savings were exhausted, he avoided the Labour Exchange. When his savings were exhausted he registered and the Insurance Officer referred his case to a Court of Referees to decide whether his long abstention from registering had rendered him no longer an insurable worker. The Chairman of the Court drew the attention of the other members of the Court to certain relevant decisions (which are not very consistent) and himself formed the opinion that the facts warranted a decision favourable to the claimant. In a previous case on that day a claimant had been abroad for over two years and in his case a disallowance was right according to the decisions. The two lay members of the Court formed the opinion that the elderly shipyard worker's case was similar to that of the man from abroad and a non-unanimous decision against the elderly shipyard worker was therefore recorded. The decision was communicated to the elderly shipyard worker and he was advised of his right to appeal, but he stated that he was satisfied with the careful hearing he had received before the Court of Referees and would abide by their decision. No appeal was ever made.

It is more than six months since leave to appeal against a unanimous decision of the Court of Referees over which the writer presides has been asked for

although it costs an appellant nothing to appeal under the procedure.

On the other hand bitter criticism of the ordinary law courts is rife among the workers whose views are expressed at evening classes. The Workers' Educational Association arrange evening classes on economic, cultural and legal subjects and it may fairly be said that intelligent and capable students, who are by no means subversive in their tendencies, take advantage of these classes. Under the rules laid down by the Board of Education half the allotted time is given to a lecture and half to discussion. The students on legal subjects have consisted mostly of branch secretaries of trade unions who are constantly having to assist their members on matters which fall within the general laws and the social legislation. Such subjects as the principles of National Health Insurance, Unemployment Insurance, Workmen's Compensation and trade union law are dealt with.

The writer believes that he has brought home to many students the sound principles underlying the general law and these forms of legislation, but the students have convinced the writer that the poorer classes suffer injustices in the ordinary law courts which are hardly tolerable. The writer finds himself having to defend the present system of judicial administration against virulent and justifiable attacks, and if he admits injustices he is asked "Why don't you and other lawyers do something to expose these injustices?"

As regards the punitive side of the law two main classes of criticism are raised: Firstly, those against

the autocratic methods of present-day Judges and magistrates and the system by which rich men sit in judgment on poor men. The case of the £5,000 a year judge, who sits back in his judicial chair and gravely tells a dishonest postman that his wage of 45/- per week is adequate to keep himself, his wife, and four children and that there is no excuse whatever for his stealing, is often quoted.

It is obvious that such comments would come better from a tribunal in which there was a working man earning approximately the same wage as the postman. Further, an elderly Judge who has for many years had an assured position and a very large income, cannot easily put himself in the position of a workman who has no assured position, a small and very precarious weekly wage and many dependants, and who in a moment of economic or domestic crisis has lost his self-control. The Calverts in *The Lawbreaker* and "Solicitor" in *English Justice* draw attention to the fact that old men appear psychologically prone to harshness. The writer's experience is similar. Many elderly judges and magistrates seem to believe in a policy of terrorism and to think that the working classes approve of vindictive sentences. In point of fact most working men appreciate that the English criminal is usually a down-and-out worker and not a man who has taken to crime when other means of livelihood were available.

The second class of criticism is against a system of law which treats poor and rich differently. So many examples are given where, on almost similar facts,

rich and poor have been differently dealt with by the law, that it is extremely unconvincing to assert that there is no differentiation in English law between rich and poor. The difference in treatment is partly due to weak and biassed tribunals which are easily swayed by prejudice, partly due to the great expense of legal proceedings, whether criminal or civil, which gives to the man with means an advantage and prevents the poor man from being represented and partly due to ill-conceived legislation which provides and contemplates punishment for persons because they are or may be unable to make restitution for damage unintentionally caused.

Two very frequently quoted cases where the punishment meted out to rich and poor varies greatly in effect are the following—

(*a*) If the wife of a working man takes an article from the counter of a shop in the provinces, two magistrates (who may be shopkeepers) sitting in the local Police Court will probably send her to prison. A rich man's wife who does the same thing in London may be able to call medical evidence to indicate kleptomania and the Stipendiary Magistrate may come to the conclusion that the case is not one for prison punishment.

It is quite possible that if the working man's wife had had medical testimony available and a slightly more impartial tribunal she might have been treated in the same way as the rich man's wife. In these matters an impartial tribunal and careful medical observation are as necessary in the case of the poor

as in that of the rich. In *The Lawbreaker* the need for observation centres and other procedure which would protect the poor as well as the rich from miscarriages of justice is very clearly brought out.

(*b*) If the driver of a Rolls-Royce motor car is guilty of an error in judgment and knocks down a cyclist he will probably be fined £5 for careless driving, and having paid the fine, will suffer no further. In similar circumstances a motor lorry driver will probably receive the same fine or the alternative (if he cannot pay the fine) of a term of imprisonment. In the latter event he will lose his job and livelihood. Here again the poor person suffers a great deal more than the rich and the punishment is altogether out of proportion to the wrongful act of which he has been guilty, particularly as he had no intention of injuring anyone.

As the writer sees the position (and most working men agree) there are three different classes of act which need separate treatment—

(1) A really wilful and criminal act which shows a definite intention by the doer not to obey the basic laws or rules of the community.

These persons need to be curbed and reformed and are the real criminal classes. There are comparatively few real criminals in Northern working-class communities and the writer is not here concerned with them.

(2) A breach of administrative rules where the delinquent may have had no intention of doing anything wrong. In modern closely packed communities a large number of rules of conduct are necessary for the well-

being of the community and some sanction is necessary to ensure compliance with these rules. The persons who break these rules are in no sense criminals, and to treat them (as the law does at present) as criminals brings the law into disrepute and even creates criminals, more particularly where sentences of imprisonment are inflicted.

The following passage from *The Lawbreaker* supports this conclusion—

"It is not only in the case of persons mentally abnormal or in need of psychological or other medical treatment that prison should not be used. There are thousands of offenders of other kinds, many of them guilty of offences so trivial that they 'are more akin to nuisances than crimes' (*Prison Commissioner's Report*, 1929, p. 9) who are sent every year to prison at great public expense with no lasting benefit either to themselves or to the community. These sentences are unanimously condemned by prison authorities, social workers and all who have practical experience of their working."

(3) A wrongful act which causes damage to a fellow citizen and which may or may not be a breach of an administrative rule. The old Common Law here contemplated restitution, provided the wrongdoing person had the means to do so, but the present trend of public opinion is to punish the wrongdoer rather than to rely upon the inconvenience and hardship of restitution (or partial restitution) operating both as a punishment and as a deterrent. Sending a wrongdoer to prison not infrequently prevents him from

making the restitution which he might otherwise have been able to make to those whom he has damaged and the burden thus thrown on the community by senseless punishment is very considerable.

The primitive doctrine of an eye for an eye, a tooth for a tooth, still holds sway in many inferior courts. The writer has heard a wife begging a bench of magistrates not to send her hasty-tempered husband to prison for assaulting her and thus break up the home of herself and her children, and has heard a magistrate retort that "justice must be done." The result of the sentence of imprisonment is that the wife suffers twice over, the children lose their home and it is doubtful whether any good results to anyone. The system of balancing damage already done by committing further damage hardly merits the name of justice.

The modern penal aspects of English law need to be authoritatively laid down by the highest courts so that magistrates may know the principles upon which they are required to act and, in addition, a clear demarcation needs to be made between those proceedings which involve a criminal charge and those which merely relate to some administrative offence. It is to be hoped that a greater number of cases will, in the future, be considered by the Law Lords who appear to exercise a more dispassionate and logical attitude than the continually changing Court of Criminal Appeal, whose decisions seem to rest largely on technicalities and precedents from a less enlightened age.

At the present time opinion on penal matters tends to swing to the two extremes both on and off the Bench. The writer has heard experienced lawyers holding judicial offices contend that it is a function of the criminal courts to act as public avengers and that a severe sentence does good in appeasing the public conscience even though it may do harm to the delinquent and may not be wholly deserved. The writer profoundly disagrees with this view but equally cannot accept the ultra-humane views set out by Margaret Wilson in her book *The Crime of Punishment.*

The same difference of opinion exists on benches of magistrates. The following conversation between magistrates is based on actual conversations which the writer has heard from the advocates' pew at quarter sessions and petty sessions.

CHAIRMAN OF BENCH. "What shall we give him?"

FIRST MAGISTRATE (*Vindictive type*). "Three years' penal servitude."

SECOND MAGISTRATE (*Ultra-Humane type*). "Give him a pound out of the Poor Box and let him go."

Then follows a whispered conversation between the Chairman and the Clerk of the Court and the Chairman announces that "the sentence of the Court" is six months' imprisonment with hard labour.

This is an example with a balanced court, but if a majority of magistrates of the vindictive type happen to be summoned for the same day, undue severity will be shown which, in time, may lead to a revolt against authority and serious outbreaks of disorder.

A substantial proportion of magistrates resemble the

early Victorian schoolmaster in their belief that sufficient punishment will produce perfection. Modern educational policy leans towards giving to students the greatest latitude in developing their particular talents and minimizing punishment. A similar change in penal policy would in the writer's view develop considerable sources of creative talent which are at present unproductive.

The writer's experience in Northern unemployment Courts and occupational centres convinces him that the prospect of punishment for unintentional breaches of statutory regulations has a much greater effect than the middle-class person in Southern communities realizes. Unemployed men's refusal to undertake activities which will benefit their morale and help them economically can often be directly traced to the fear of punishment following upon the unintentional breach of a statutory regulation. The following is a typical unemployment centre case. A boat for use by unemployed men had been obtained to be delivered at a neighbouring port. There were plenty of volunteers ready to undertake the arduous and hazardous work of bringing this rowing boat across the open sea but when mention was made of Board of Trade regulations the attitude of many of the volunteers changed. It was one thing to risk one's life bringing an open boat across the open sea: quite another to risk breaking an obscure regulation and being treated as a criminal.

The lover of regulations may contend that this is a trivial example but if one wanders through Northern towns where more than fifty per cent of the able-

bodied population has been idle for a number of years and where the unemployed population is largely composed of skilled workers it is difficult to understand why so few efforts to start new industries have been made by the workers themselves unless one also appreciates the mass of regulations and the way in which breaches of regulations are treated in the Police Court.

The following case from the Unemployment Courts will further illustrate the mentality of respectable working men in depressed areas.

A middle-aged craftsman worker who had worked for one firm for about twenty years had been unemployed for three or four years when his wife, to eke out their extreme poverty, made a few cakes and did a little useful productive work for neighbours. These facts came to the knowledge of the Labour Exchange and the worker was brought before a Court of Referees to ascertain whether the wife was "carrying on a business ordinarily carried on for profit" in which case a cut in the worker's benefit would be made.

The manner in which the worker presented his case was—

"Gentlemen, I am very sorry that this has happened. I told my wife she was doing wrong but we were so poor she felt she must do something." The worker then produced immaculate references. The Court were satisfied after hearing material evidence that this was not a business within the Act and in announcing the decision the writer exerted himself to bring home to the worker that his wife had done nothing wrong and

that the Court was engaged in protecting the workers' rights, not punishing workers. In expressing these views the writer had the full concurrence of the workers' and employers' representatives.

(c) THE RELATION OF LAW TO INDUSTRY AND COMMERCE

Lord Macmillan, one of the leading British jurists of to-day recently drew the attention of a legal gathering to the enormous and increasing volume of Statute Law which is being placed on the Statute Book and he expressed the opinion that no one could keep abreast of Statute Law at its present rate of output and that some check would have to be put on the making of new laws and regulations. These views are almost universally accepted among lawyers, who make no effort to meet the situation but merely shrug their shoulders and ask what can be done by lawyers whose numerical strength is very small. The industrialist and the merchant whose businesses are directly affected by much of this legislation are unable to adopt so detached an attitude as the lawyer, and the writer sets out below his experience of the manner in which small and large industrialists meet this difficulty.

The small man is quite unable to grasp the meaning and effect of many of the industrial statutes and the regulations made under them and is unable to bear the expense which constant reference to lawyers entails. He therefore chances breaking regulations, and one finds when a breach of a regulation is discovered

that the small man has quite innocently been breaking the regulation for years and would have gone on doing so but for some fortuitous circumstance. The army of inspectors and other officials already existing is insufficient to enforce all the complicated regulations, and only where an accident occurs or a complaint is made are breaches of regulations usually discovered. The safest course for the small man if charged by a government official with a statutory offence is to grovel. In that event he will probably be treated leniently by the Court which penalizes him. In the writer's view this grovelling attitude is harmful. It does not lessen the offence and it tends to increase the official tyranny and to prevent the Courts from construing and making clear industrial laws.

The following facts illustrate a typically hard case—In tramp steamers iron ladders with rungs go down the sides of the hold to enable men to reach the tank tops for cleaning and other purposes. It is most important that these ladders should be kept in repair. If, however, a ship is loading iron ore, the pouring of iron ore from tips into the ship's holds will probably damage these ladders and the damage will not be discovered or repairable until the hold is emptied.

A statutory regulation makes it an offence for these iron ladders to be out of repair. In a case some years ago friction had arisen between an official and a certain shipowner. A ship belonging to the shipowner was arriving at a North-East Coast port with a cargo of iron ore. Watch was kept as the cargo was unloaded

and, a damaged ladder being found, a summons followed. The shipowner who had, according to his own view and that of most unbiassed persons, been guilty of no offence (since he had had no opportunity to repair the ladder until the iron ore was removed) contested the charge made against him which turned upon the meaning of the regulation. The matter came before a Petty Sessional Court and was contested upon the construction of the regulation. The Court fined the shipowner heavily, but gave no reasoned decision on the meaning of the regulation and as the cost of an appeal would have been out of proportion to the penalty, the case was dropped and the law remains uncertain and inequitable in the particular circumstances.

In a somewhat similar case other shipowners pleaded guilty, praised the government official for his vigilance and generally flattered him so that he took up a lenient attitude and the offence was treated leniently as a technical breach.

Very many similar (although more complicated) examples could be collected from different types of industry.

At a time when every penny counts in computing whether an industry can be carried on without loss, legal expense and interference should be cut down to a minimum. The legal proceedings and the heavy fine (which were unnecessary in the circumstances of the case described) probably turned a voyage which just paid for itself into a voyage which was a dead loss to the shipowner, and the shipowner would therefore have

been better off had he left his ship at her moorings and never engaged in the enterprise.

Occasionally the trader is protected by a Stipendiary Magistrate who refuses to put absurd constructions on industrial regulations. The following is a Leeds case, the account being taken from the *Newcastle Journal* of May 31, 1934—

"A charge of 'having access to milk churns and failing to keep his clothing clean' was preferred at Leeds yesterday against H——, a milk carrier, of Gisburn, but the Stipendiary dismissed the case, describing it as 'absurd.'

"It was stated that H—— was seen unloading full milk churns from a motor lorry at a dairy at Leeds. His clothes were dirty and covered with grease.

"THE STIPENDIARY: Am I asked to say that this man's clothing would come into contact with the milk?

"FOOD INSPECTOR C——: The regulation sets out that his clothing must be clean, sir.

"THE MAGISTRATE: It seems an absurdity to me to say that a man driving a lorry containing milk churns should have to keep his clothing as clean as a man who was milking a cow. You might just as well say that a railway porter who takes churns from a railway van is committing an offence because his clothes are not clean, and if the regulation provides that I cannot understand it. The case is dismissed."

In order to ascertain how far this type of official interference handicaps industry, the following reasoning may be applied. The distress on the North-East

Coast a hundred years ago was probably as acute as it is to-day, and reading the accounts and remedies then suggested, the basic conditions must have been similar to those of to-day. In the age of railways and steamships, which followed that depression, new and prosperous industries were built up. The men who built up Tyneside industry in Victorian times, of whom one may take at random Armstrong, Cowen (the blacksmith,) and Stephenson, mostly started as small men. All of them were independent, enterprising men with creative ability and each met with considerable opposition. Could any of these men have built up great industries had the present administrative domination existed in those days? Alternatively one may put the question in the following way: Tyneside is striving to-day to found new industries. Does the necessary freedom and protection exist under which a modern Armstrong could build up a new industry?

The writer would answer these questions in the negative and would assert that among the thousands of highly trained artisans on Tyneside there are many who could and would attempt to found new industries were it not for official despotism and the uncertainty of the law.

The best remedy would be the creation of an efficient Court to adjudicate in industrial matters, to protect the small industrialist and trader and to interpret and state the law. If the North-East Coast had a local industrial Court comprised of men of the type of Lord Moulton with his legal and scientific experience, Sir Hugh Bell with his very great knowledge of industry,

and Havelock Wilson with his shipping experience and his fierce independence, few reasonable men can doubt that they would not have allowed the iron ore case which has been mentioned to pass without some stricture on the unfairness of the law, always assuming that they came to the same conclusion as did the actual tribunal on the meaning of the regulation.

It may be said that able and experienced men would not serve on industrial Courts except for prohibitive remuneration. The writer doubts the accuracy of this view. No difficulty is found in obtaining first-rate men to sit on Royal Commissions for no remuneration and the same applies to other judicial bodies.

A Court having industrialists as part of the tribunal would command the respect and confidence of an industrial and trading community, and if it showed itself impartial and protective of legitimate industry the confidence and enterprise which are at present lacking might be restored.

The methods by which "big business" deals with legal problems may be illustrated as follows: An apparent breach of a statutory duty having occurred, junior counsel is instructed to advise. This opinion is followed by that of a costly opinion from a King's Counsel and that again is followed by a further and more costly opinion from a still more eminent Counsel, preferably with a title. Armed with these opinions (which are probably different) negotiations are opened and the matter is usually compromised. Opinions of Counsel have no value except for negotiating purposes

and leave the law as obscure as ever, besides costing industry a substantial amount. An industrial Court could give the industrial community an industrially sound interpretation of statutory regulations and "big business" men as well as the small men would know where they stood. Such a local Court by its reasoned decisions would also bring to the notice of people outside commerce and industry the difficulties and the uncertainties under which present-day commerce and industry are operating and might help to bring about the check referred to by Lord Macmillan since it would tend by actual examples to show the public how industrial enterprise is being handicapped by statutory regulations. Public opinion might then bring pressure on members of Parliament to have the regulations reduced in number and made clearer.

The demoralization in both employing and working classes on Tyneside is very marked. If one talks to employers on a small scale, one almost invariably finds them worried, saying that it is better to be a salaried official than a business man, that what with foreign competition and harassing regulations the future of their businesses is very uncertain. One can also read in local newspapers innumerable suggestions by employers that their particular industry is ruined unless the State will immediately give it a number of special privileges.

If one goes to unemployment centres and other institutions where unemployed workmen congregate one finds a similar state of hopelessness. The older men don't think they will ever work again, the younger

men and more particularly the able ones are not anxious to enter industry but hope to enter the central or local government service on account of the security and pleasant work which it holds out. University teachers frequently draw attention to the fact that the cream of their students enter the government service and do routine work which could be done as well by second-class men.

The following actual examples illustrate the wastage of ability for which the law, as it stands to-day, is partly responsible.

(1) An elderly man about sixty of the keen intelligent type told a Court of Referees that he had been a foreman shipyard worker for very many years. He had been paid off owing to the yard where he worked being closed down. At other shipyards he was told he was too old, it was no use his applying for work as the Workmen's Compensation Act risk was too great in the case of old men. He was very anxious to work at his trade. The "dole" was no use to him.

Here one has an elderly man by no means past working, armed with the accumulated knowledge and experience of many years which he could pass on to younger men. A beneficent but distorted law prevents him from exercising his powers and condemns him to an impecunious and idle old age and at the same time throws the burden of supporting him upon an already overburdened community.

(In later chapters this aspect of the present Workmen's Compensation law is commented upon).

(2) A young and very able man had been employed

as a draughtsman for a number of years by a firm with a world-wide reputation for certain specialized forms of machinery. Slackness of work caused his suspension. By great efforts he passed into the government service where his work is routine work of a low grade arising out of the copious regulations recently passed. He has ceased to be an asset of Tyneside industry and has become a liability to industry generally.

Supermen from Whitehall and prosperity loans may achieve some success in reviving Tyneside industry but an internal regeneration of Tyneside industrial conditions (which can be assisted by simplification of the law and more impartial administration of the law) is necessary to effect a lasting recovery.

Writing of the industrial depression in England a hundred years ago Professor J. H. Clapham says—

"There is a limit—very soon reached—to the amount of workmanlike creative legislation or administration of which any government is capable in a given time. There was no limit to the call on creative ability in a nation barely recovered from twenty-two years of war, shaken by ill comprehended economic change and bewildered by a growth in its own numbers without precedent in history." (*Economic History of Modern Britain*, vol. I, p. 316.)

The passage seems equally relevant to the present industrial depression and it is in the writer's view essential that the creative ability of the nation should be protected and not hampered by the law so that once again it may bring prosperity to the people of Britain.

CHAPTER II

NORTHERN COURTS AS THEY ARE

(*a*) A FOREIGNER'S POINT OF VIEW

The North-East Coast industrial area is probably the most sharply defined industrial area in the United Kingdom, and one of the most specialized. Its commerce is mainly connected with shipping and the export of coal, and its industries are mainly those of the heavy engineering type, shipbuilding, steel production, and coal-mining. Many of the large Tyneside firms have had and still have commercial relations with all parts of the world, and ships such as the *Mauretania* have given to the shipbuilding firms of the Tyne a world-wide reputation.

In spite of this industrial importance the North-East Coast has never had a permanent Court where commercial and industrial disputes over £100 (or in some cases £300) can be decided. The writer has on a number of occasions been asked to show foreign lawyers the Law Courts on Tyneside. In some cases these lawyers represented important foreign interests, and they almost invariably asked to be shown the Court where the industrial and commercial disputes on Tyneside are decided. This is an important matter to a foreign firm which is trading with the Tyneside, and the answer which has to be given is that Tyneside has no permanent Court where cases of importance of any kind can be decided. "How then," asks the

foreign lawyer, "are the inevitable disputes and differences which arise in any large industrial and commercial community decided?" The answer appears to be, "Some are decided in London, some are decided by arbitration, the rest are compromised." One can feel the prestige of Tyneside falling as the foreign lawyer appreciates this. Hamburg has its own commercial Court, so has Marseilles: surely so important an area as that which contains the ports of Newcastle, Blyth, Sunderland, Middlesbrough, and West Hartlepool should have a commercial and industrial Court. Another question asked is: "Have the merchants and industrialists of the North-East Coast never asked for a local commercial Court?" The answer is that during the last fifty years there have been repeated requests by eminent industrialists and by bodies of eminent lawyers and commercial men, but the reply has always been that the matter will receive the most careful attention, and then nothing has been done. In 1878 Mr. Joseph Cowen, Member for Newcastle-upon-Tyne, advocated in the House of Commons just such a scheme of legal reform as a Special Committee of the Newcastle-upon-Tyne Law Society put forward in 1933, and numerous other instances between those dates could be given. In an Appendix will be found an abridged text of Mr. Joseph Cowen's speech delivered more than fifty years ago, and the reader can appreciate from it how little has been done in the last fifty years to improve the standard of provincial justice.

The excessive cost and inefficiency of having to decide every day commercial disputes at a centre three

hundred miles away tends to magnify every little dispute, and to give to the powerful and rich litigant an altogether unfair advantage over his poorer opponent, and this has undoubtedly contributed to the loss of confidence and enterprise on the North-East Coast. A substantial Tyneside business man told the writer that owing to the ruinous cost of litigation "we business men make our contracts as man to man, and settle our disputes as man to man"—"The 'jungle principle'" as a foreign lawyer described it!

A brief description of the actual Courts which operate on Tyneside is given in the following sections, and it will emphasize their inadequacy for twentieth-century industrial and commercial purposes.

(*b*) ASSIZE COURTS

Once every four months one and sometimes two High Court Judges come to Newcastle-upon-Tyne for a period of six to eight working days. The Assize system was started in the reign of Henry II, and much of the existing ceremonial goes back to that period. Although the comparatively short time of twenty-four working days in the year is all that is available for trial of Tyneside major civil disputes and criminal cases, the greater part of the first morning at each Assize is spent in ceremonial and religious preparation. The High Court Judge leaves the Mansion House (where he is lodged) about 10 a.m. in an antiquated horse coach and proceeds with the High Sheriff (a country gentleman occupying a purely ceremonial office) to

the cathedral, where a special service is held for the Judge, at which the High Sheriff's chaplain (usually the vicar in the High Sheriff's parish) preaches the Assize sermon. At the end of this service the city traffic is stopped while the coach lumbers down to the Guildhall, where the Judge meets a body of city magistrates, the King's Commission to "clear the jails and to do justice" is read, and a speech on general matters of interest is usually made by the Judge. Another journey in the coach from the Guildhall to the Moothall follows, and the King's Commission is again read and speeches are made. Then the Judge, after changing out of his ceremonial wig and robes, begins the legal business. Precedence is rightly given to criminal cases, since they involve the freedom of the subject, and if the accumulation of four months' criminal cases is heavy the time for civil cases is negligible, having regard to the importance of the area. Very few civil cases are set down for trial at Assizes, particularly where a careful trial is desired by both parties. Experienced commercial solicitors almost invariably advise their clients in important cases either to set the case down in London with its attendant heavy expense, or else to arbitrate. Practically the only cases disposed of at Assizes are criminal cases and motor running-down cases, and even these types of business necessitate the Court sitting late on most nights of the Assize in order that the work may be completed before the Judge is required to go through the Assize ceremonial at another County town.

Other outstanding disadvantages of the Circuit system are that the parties do not know what type of Judge will try their case. Trial of a shipping case by a Judge who has specialized in ecclesiastical law or criminal law will give little satisfaction to the litigants, since he will be quite unfamiliar with shipping conditions, and will probably make serious technical mistakes. The Judge is also handicapped on Assize by being away from his law library. When a difficult case comes before a conscientious Assize Judge his first instinct is to adjourn it to London for argument so that he may have his law books available. The parties almost invariably resist any suggestion to adjourn the case to London as it will substantially increase the costs. The alternatives, then, are to give an unconsidered decision, or to borrow from counsel such books as they have in Court and make a hasty examination of the authorities available.

To the foreign lawyer the Assize system is an interesting medieval ceremony, but unsatisfactory as a twentieth-century means of administering justice. To the average English barrister it is like his public school and university, an institution which cannot and must not be criticized. To many working men who know something of the system and its history it is a relic of an oppressive age, and the sooner it is abolished the better. To Northern citizens generally with their democratic, Nonconformist, and Puritan tendencies, the ceremonial and the bowing and scraping are repugnant, although there is a middle-class minority which likes the titles and the ceremonial.

A typical series of questions asked by working men starts—

Question. Are the Judges the servants of the People or the People the servants of the Judges?

Answer. The Judges are the servants of the State, but in a position of independence from official interference.

Question. Is this proper? and then follows a quotation from some report in a newspaper of which the writer gives a typical example. *Daily Herald*, February 5, 1934—

"I am not a Judge of the Divorce Court, and I see no reason why I should make myself familiar with rules in cases I do not normally try." This remark was made by Mr. Justice —— when he commented on the fact that Judges on Circuit had to deal with divorce as well as crime and civil cases."

Answer. If the newspaper report is accurate, and it means that the Judge is refusing to try a particular type of case on Circuit, it appears to be contrary to the King's Commission and unconstitutional, but if it only means that the Judge is not going to take much trouble over a particular type of case, it is within his powers.

Question. Why isn't anything done about it?

Answer. Parliament and the Lord Chancellor either take the view that the Judge's conduct is regular, or that the matter is not of any great importance.

These answers do not convince the constitutionally minded working man that the present Assize procedure is democratic.

The year 1934 was the centenary of the notorious

Dorchester (Tolpuddle) Labourers' case, and that case has without doubt come under discussion in many trade union lodges. Sidney and Beatrice Webb's description of this trial in the *History of Trade Unionism* makes the Judge of Assize the villain of the case, although to most lawyers it seems to have been the law and perhaps the jury that were mainly to blame for the unfortunate result. The writer finds that most working men agree with the Webbs' view, blame an autocratic judicial system, and want it radically altered.

Another very fierce ground of criticism is the lack of consideration shown to the public by the Judges of Assize and their subordinates. On the first day of business, litigants, jurors, and witnesses are summoned to be at the Court at approximately 10 a.m. The Judge does not usually arrive until about midday, and all the people summoned waste two or three valuable hours which might have been spent profitably elsewhere. If a witness or a juror keeps the Judge waiting five minutes, woe betide the poor fellow. The only persons besides the Judge whose convenience is considered are London Counsel.

These and many other criticisms are made.

The writer's conclusion is that it is only a question of time before the Red Judge procedure is abolished and a more democratic and efficient system takes its place.

The Business of the Courts Committee (a body of London lawyers) take a very different view. They say—

> "We are not unmindful of the attachment that prevails to that system of a Judge of Assize attending

cities and towns in accordance with a custom centuries old."

Is there this strong attachment to the Circuit system among working people in the provinces, and through whom does it manifest itself? It would be interesting to know upon what evidence these London Judges and lawyers reached their conclusion.

COST OF THE ASSIZE SYSTEM

The Assize system with its ceremonial is very costly. Besides receiving his ordinary salary of £5,000 per annum, each Judge on Assize receives an expense allowance at the rate of £7 10s. per day (£2,737 10s. per annum). In addition a Marshal, Clerk, Butler, Marshal's man, and Cook are provided as retinue for the Judge of Assize and paid substantial sums out of the public funds. Each Circuit has a Clerk of Assize, Associate, and other officials whose salaries and travelling expenses amount to a very substantial sum. The county towns, where the Judges sit, have to provide lodging and house staff for the Assize Judges. The High Sheriff pays the remainder of the ceremonial costs, which may amount to from £1,000 to £1,500 a year.

Does the North-East Coast Area get value for the cost of legal administration?

English civil justice is administered by approximately thirty Judges of the High Court (£5,000 a year men) and sixty Judges of County Court standard (£1,500

a year men). As the North-East Coast area has about one-fifteenth of the population of England and Wales, one would expect it to have the continuous services of two High Court Judges and four Judges of County Court standing. Actually it has the equivalent of the services of one High Court Judge for about ten weeks in the year, and the continuous services of two County Court Judges.

THE AMBULATORY JUDGE

The system of dispensing justice in England has for the last eight centuries been bound up with the Circuit system which has had, as its tribunal, a combination of a London Judge and a local jury. For medieval times this blend of London learning and local knowledge was reasonably effective. The complexity and specialization of modern business conditions are making the jury an unsuitable tribunal of fact for the administration of civil justice. What, then, is to be the tribunal of the future? A London Judge with no knowledge of local conditions, or some more representative, more knowledgeable tribunal? This is a question which at no very distant date the electors of England and Wales may have put before them.

REFORMS

Reforms based upon either the scheme outlined by Mr. Joseph Cowen, Member of Parliament for Newcastle-upon-Tyne, in the House of Commons in 1878,

or that suggested by the Law Reform Committee of the Newcastle-upon-Tyne Law Society in 1933 appear essential. Although in detail these schemes vary, the underlying principles are similar. Mr. Joseph Cowen's scheme (particulars of which are to be found in the Appendix) contemplated the division of England and Wales into seven areas, each of which was to have its own civil courts administered by judges resident in the locality. Each set of local courts was to be departmentalized in the same way as the present High Court in London, so that a judge who was conversant with the law relating to land would try real property cases, and a judge who was conversant with industrial law would deal with industrial matters. In effect the principles underlying his scheme were—

(1) That the interests of the litigant (and not those of London judges and lawyers) should be the paramount consideration.

(2) That persons living in provincial cities should not be required to go to London to obtain justice.

(3) That modern business methods should replace the existing dilatory medieval ceremonies.

(*c*) COUNTY COURTS

The modern English County Court system was founded in 1846 after twenty years struggle for local Courts by Lord Brougham and other reforming lawyers. Prior to that date every claim involving more than forty shillings had to be set down in London and tried either in London or at Assizes. During this twenty years of

struggle the Bench and Bar fought valiantly to prevent a reform which has proved a godsend to poor litigants, and of which Brougham said, "Not all the attorneys in Christendom can long prevent a measure which is so much in the interests of the public."

The following quotation from a speech of Lord Lyndhurst in 1833 (opposing a Bill providing for local Courts) indicates the opposition of the London vested interest, which did not like to see work leaving London, although the opening sentence affirms that absolute selflessness which characterizes London lawyers—

"No body were ever less disposed than the body to which he referred [the Bar] to oppose their own interests to any measure which had the public advantage for its object. . . . By this Bill fully two-thirds of the business now transacted at Westminster Hall would be transferred to these local Courts . . ."

The County Courts Act of 1846 created local Courts for each County with a jurisdiction in disputes up to £20. Since that time local Courts have justified Lord Brougham's efforts, and the original jurisdiction of the County Courts has been steadily increased. It is now £100 in all cases, £150 in certain shipping commercial cases, and £300 in others. In Chancery matters property up to the value of £500 may be the subject of County Court proceedings, and the High Court may in specified circumstances remit cases to the County Court up to any amount.

The Judges of the County Court are usually London barristers who have had a second-class practice, and they sit almost invariably alone, although a jury may

be empanelled. The County Court is regarded as the "Poor Man's Court," and in order to keep down expense appeal is hedged round with so many difficulties that it provides very little check on the quality of justice administered. For the two and a half million inhabitants of the North-East Coast, civil justice, within the County Court limits, is in the hands of two individuals who are immune from any form of legal process in respect of their conduct of cases, and are practically irremovable. In the normal case they occupy their offices from the age of about fifty-five to the age of seventy-two, but may sit until they are seventy-five. During this period of life the human faculties are usually beginning to deteriorate, and it is obviously imprudent to leave the disputes of a large community in the hands of one such person sitting alone as judge and without any effective appeal.

Further, there is a great similarity in the types of cases tried, and most County Court Judges begin to show distinct signs of boredom with their work after five or six years of office. A composite tribunal would tend to correct these faults, more particularly if the various types of case were segregated and experienced tribunals for each type of case were formed. For this purpose it is necessary to consider the types of case which at present come before a County Court Judge.

(1) *Judgment summonses and disputes involving very small sums.*

Most County Court Judges dislike the judgment summons work, and find it extremely irksome, and

there is a movement on foot to have the whole of this type of work transferred to the Registrar of the Court. Judge Sir Francis Greenwell (of whom a memoir is given in a later chapter) regarded this work as the most important part of a County Court Judge's duties. Measured in terms of human happiness it probably is. In order that the layman may judge for himself it is necessary to explain its characteristics.

Ordinarily English law operates on the goods of litigants; for example, if judgment is given for £50 against a defendant he must either pay that sum or have goods of his sold to satisfy the judgment, a process known as execution. In the case of the upper- and middle-class litigant this method operates effectively, but the law excludes from execution most of the goods usually owned by the working classes, i.e. tools, bedding, and other personal goods. Thus a judgment creditor of a workman has to employ some other means to obtain payment of money due to him from a workman under a judgment. The method employed is for the creditor to appear before the County Court, give evidence of the means and circumstances of the debtor and obtain an order from the Court for payment of the debt at a specified sum per month. If the order is not obeyed, a second application is made to the Court. Upon the second or third application a suspended committal order is usually made, i.e. the debtor is committed to jail for a period not exceeding six weeks, but the order is suspended so long as the debtor pays the instalments specified in the order. It will thus be seen that the power which a County Court

Judge wields over debtors in poor circumstances is very great. After the disastrous 1926 coal stoppage there were in the North-East Coast area many firms which had given credit to working men to tide them over the bad time, but they were unable indefinitely to stand out of their money. On the other hand there were thousands of working men in debt for £10 or £20 who had a wage barely sufficient to keep themselves and their families. In these circumstances it required a Judge with a very great experience of working-class conditions, i.e. of how far money will go in a particular community, to decide what fraction of the worker's wage should be applied to payment of his debts. Judge Greenwell did this work slowly, with the greatest care, and with an experience of seventy years lived entirely among North-country people. He watched particularly for cases where there was sickness in the family, and where an ultra-honest or optimistic debtor would undertake to pay more than his means made really possible, thereby endangering the health of his family and rendering himself liable to imprisonment if he failed to comply with an impossible order. Further difficulties to be contended with arise from creditors assigning their debts to debt-collecting agencies, whose methods require careful scrutiny, and owing to debtors being unable to be present owing to their work. It may thus be seen that only by great vigilance and experience can a County Court Judge avoid sending debtors to prison for misfortune rather than wilful refusal to carry out the Court's order, and that it is essential that an indepen-

dent person should do this work. The average Registrar by reason of his training as a solicitor is not so independent as a member of the Bar who has been made a Judge. Moreover, many Registrars carry on private legal practices while holding office as Registrar.

Beside removing this work from the County Court Judge, there is also a strong movement on foot to abolish the committal order in respect of refusal to pay debts. Unless some other adequate sanction is put in its place, abolition of the committal order will curtail the credit which at the present time the average worker is able to get, and which helps him through many difficult situations, since no reasonable man is likely to lend money where he has not some power of enforcing payment. Were Judge Greenwell alive today the writer is of opinion that he would strongly oppose both the shifting of the judgment summons work to the Registrar and the abolition of the committal order for refusal to pay in accordance with a Court order.

(2) *Disputes involving sums between £10 and £100.*

This class of case divides itself into two different types:

(*a*) The cases relating to domestic rights, usually founded in tort (wrong) and concerned with houses, motor cars, dogs, cats, etc. There is usually a human interest in these cases, and on the whole the average County Court Judge tries these cases adequately, as his own practice at the Bar has generally been in this type of work. It should perhaps be noted that

a reasonable percentage of miscarriages of justice in this branch of the law is not a serious matter to the community (although unfortunate for the individual) because the cases being founded on a particular wrongful act do not, as a general rule, affect other cases.

(*b*) The small commercial cases which usually rest upon a contractual basis and upon a particular course of business. These cases are of a type similar to those tried in the London Commercial Court, where it can truly be said that the same measure of justice is meted out to Britons and foreigners, Jews and Christians, rich and poor. Since commercial cases rest upon a contractual basis they can be and are in the London Commercial Court tried in an impersonal way, and every litigant is treated as a respectable commercial man who has come to the Court to ascertain and establish his legal rights. Where foreign firms are concerned the Judges in the Commercial Court make a point of stating the law and their reasons for their decision in greater detail in order that the foreigner may know exactly how and why the Court arrived at the particular result. This attitude is sometimes called the Commercial Court spirit of litigation, and has raised the reputation of the Commercial branch of the High Court to a very high level. In contradistinction to the Commercial Court procedure a method of dispensing justice known as the Old Bailey method exists, although it may not be employed in the Old Bailey of today. Under this method everyone is treated as a criminal, litigants, witnesses, and even solicitors,

and the cases are tried with a maximum amount of prejudice and abuse. The average County Court Judge has never practised in the Commercial Court, but is usually familiar with the Old Bailey method of trial, and the small commercial cases in many County Courts are more frequently tried by the Old Bailey method than in the Commercial Court spirit. A small tradesman may go to the Court to enforce a contract of a type which is the foundation of his business, and of which type hundreds have been enforced in the High Court. In the County Court the contractual basis of the transaction may be ignored and a rather spurious form of moral issue raised by advocates of the Serjeant Buzfuz type. The little tradesman may be cross-examined as to whether he believes in buying in the cheapest market and selling in the most expensive, and unless he shows great adroitness and presence of mind, he may get an unfavourable decision, be called a scoundrel, and leave the Court with his commercial reputation damaged. Such trials, far from creating a state of law and order, demoralize trade and business, and ought to be severely checked. As has been said, there is no effective appeal from the County Court to a higher Court except in Workmen's Compensation cases, and whether that fact is the explanation or not it is certainly true that Workmen's Compensation cases are tried in a much more judicial way than any other cases in the County Court.

Unlike the domestic type of case the small commercial case frequently affects not only the individual litigants, but the whole trading community. In a

memoir of the late Judge Greenwell the writer has given certain instances of most unfortunate dicta.

If Tyneside is to recover its industrial prosperity it must have a commercial and industrial tribunal which is capable of protecting legitimate trade and enterprise.

(3) *Workmen's Compensation Act cases.*

Strictly speaking these are not County Court cases. When the first Workmen's Compensation Act was passed it was hoped and expected that there would be no litigation under the Act, and Parliament did not wish the injured workman to be subjected to the ordinary cost of litigation. It therefore enacted that in the event of any dispute the local County Court Judge should act as arbitrator in what were to be informal arbitrations. The intention of Parliament has been completely frustrated. Workmen's Compensation cases have become the most formal, the most expensive, and, it is only fair to add, the most carefully tried of all County Court cases. Many County Court Judges are experts in this intricate branch of the law, and were it not for their own lack of industrial and medical knowledge, the subtlety of the law, and the great expense involved (an expense frequently out of all proportion to the injured workman's means and the amount recoverable), there could be little criticism of this branch of the County Court work.

Subtlety of the Law of Workmen's Compensation.

The operative part of this law is contained in the most recent of the Workmen's Compensation (Con-

solidation) Acts, namely, that of 1925, and occupies about twenty pages of an ordinary textbook. On the other hand, the interpretation of this law (i.e. reported cases which form precedents) occupies about 20,000 pages of subtle reasoning. The Workmen's Compensation Acts were passed to protect the worker from *industrial accident* by compelling the employer to insure the workman against industrial risks, or himself act as the workman's insurer in respect of this form of risk. As at present interpreted, the dependants of a man who dies of heart disease on the employer's premises will probably receive compensation, although there was no accident of any kind, but a man who has been injured by machinery in what can only be called an accident may fail to get any compensation due to some Judge-made rule (such as the "added peril" rule). The writer has lent to working men standard case books and textbooks on Workmen's Compensation law, and most of them attack the very subtle reasoning on which some cases succeed and others fail. The following passage from a judgment of Lord Sumner in the House of Lords in 1921 illustrates the subtlety introduced—

"My Lords, the legislature has not thought fit to define the word 'accident' as used in the Workmen's Compensation Act. I therefore infer that the word is to be used as plain men understand it. . . . I am tempted to say that the application of the words of the Act would be simple if it were not for the decisions, but at any rate I feel sure that we have now reached, and perhaps passed, the point in this copious juris-

prudence at which nothing is to be gained by further disquisitions in a plain case." Since these words were uttered about ten thousand further pages have been added to this copious jurisprudence.

The departure of the law from its fundamental conception damages industry because, if employers are to be made to insure workmen against diseases of old age, the older men, who have more experience than younger men, will be excluded from industry altogether, and industry will lose the advantage of their accumulated skill and experience apart from the fact that this type of elderly man is frequently most anxious to work and not to be a burden on the community.

Cost of workmen's compensation proceedings.

The maximum weekly amount a workman can receive under the present Act is 30s. per week while totally incapacitated, and a proportion of that sum while partially incapacitated. In either type of case the approximate scale of expense involved in establishing a disputed claim is—

	£	s.	d.
Counsel's Fee (gross)	6	16	0
Solicitor's Bill	10	0	0
Specialist Doctor's Fee	10	10	0
General practitioner	2	2	0
Total cost per party	£29	8	0

Thus £30 approximately is expended in establishing a disputed claim for 30s. per week or less for an indefinite period which may be quite short. In many cases where the workman has no trade union or other

society behind him it is quite impossible for him or his relations and friends to raise £30, and some of the items have to be dispensed with. The big federations of employers and workmen retain the services of the most favoured expert witnesses and counsel, and the injured workmen or small employer, who is not backed by a rich society, stands a very small chance of getting a full measure of justice. Further, the Judge is not a medical man, and he has usually to choose between two bodies of expert evidence which are directly contradictory. The more powerful litigant gains a great advantage here, as he is able to pay the fees of well-known expert witnesses.

An alternative process is available by which medical matters are referred to Medical Referees, but this procedure does not work very satisfactorily because it is a purely medical tribunal, and the legal issues involved are frequently misunderstood.

A Royal Commission on Workmen's Compensation, presided over by Judge Gregory, drew attention to the fact that of the fund provided by employers to compensate injured workmen less than 60 per cent was at that time reaching the workmen, the remainder being swallowed up in legal and administrative expenses and insurance company profits. The writer understands that the Labour Party has a Bill ready by which the administration of Workmen's Compensation will be removed from the County Court and handed over to an administrative tribunal. Whatever measures are introduced, disputed cases will continue to arise, and the best tribunal for deciding such cases would be one

which had legal, industrial, and medical experience within itself, and was not dependent on expert evidence bought by one of the litigants.

REFORMS

The same reforms which are necessary to render Assize Court justice efficient and inexpensive are necessary in the case of County Courts.

The division of cases into various classes was recommended by the Judicature Commission prior to the Judicature Acts, 1873, and the Commissioners also drew attention to the necessity for an efficient tribunal to try provincial cases not involving large sums of money, but requiring the decision of complex and important principles of law. No notice was taken of their opinion on this latter point. One has only to glance through a textbook dealing with leading cases of English law to appreciate the fact that many of the cherished principles of the law resulted from minor disputes which would today be regarded as being of trifling importance, and would be decided in the provinces by a County Court Judge, or a pair of magistrates in the most arbitrary manner and without any statement of the law.

(*d*) POLICE COURTS

The Petty Sessional Court (or as it is popularly called, the Police Court) differs radically from the Assize Court and County Court. The latter Courts

are presided over by a single highly-paid lawyer, and provide an expensive but fairly consistent form of justice, whereas Police Courts are presided over by two or more unpaid magistrates who are usually ignorant of the law and inexperienced in the administration of justice, and they provide an inequitable and inconsistent though cheap form of justice. To the foreign lawyer the two types of tribunal are extreme examples, in one case of legal despotism, in the other of lay injustice, and neither displays the usual English characteristic of following a middle course.

Unlike the County Courts of the North-East Coast, which are presided over by one or two men, the Police Courts of the North-East Coast are conducted by two or more lay magistrates drawn from panels comprising in all about a thousand men and women. Each Police Court is quite separate from its neighbour, so that the form and measure of justice varies very considerably within a small area, and even varies in the same court from day to day. Generally speaking, the administration of justice is better in the large towns than in the country districts, because a more businesslike and experienced magistrate is available, but for the most part the justice is of an inequitable and uneven type. It is not within the province of this book to describe in detail the injustices which occur in the Police Courts, partly because it is here intended to deal mainly with the civil administration of justice and the Police Courts are mainly concerned with the criminal law, and partly because the reader will find in *English Justice*, by a Solicitor of twenty-five years'

experience, an account of Police Court methods of administering justice which truly describes the form of justice dispensed in the average provincial Police Court.

The three weaknesses of the present Police Court system are—

(1) The ignorance of the magistrates of the law which they are required to administer and their consequent dependence on their clerk;

(2) The close connection between the police who are usually the prosecutors, and therefore a party to the proceedings, and the magistrates who, as Judges, should be independent of both parties;

(3) The unsatisfactory and anomalous position of the magistrates' clerk. In many Police Courts he is in effect the Judge, because he is the only person connected with the tribunal who has any knowledge of the law and legal procedure, and without his assistance the magistrates are helpless. The Clerk is nominally appointed by the magistrates whom he serves, but in reality the post almost invariably passes from father to son, or in default of son, from partner to partner in the legal firm to which the Clerk belongs. Many clerks not only perform judicial duties in the Police Court, but also carry on private practices as solicitors, and while they cannot directly practice in the Courts of which they are clerks, working arrangements between firms create a position which is not conducive to independent administration of justice. A few clerks to magistrates are not even qualified solicitors.

Reactionary lawyers answer the very damaging

facts and arguments against the present Police Court system by saying that in spite of apparent anomalies and injustices the Police Courts do their work well and give satisfaction to the public. That is not the experience of the writer. His experience leads him to the same conclusion as that formed by the author of *English Justice*—

"I am certain that discontent with the administration of justice in this country is growing among the working classes to an extent that may be dangerous."

The writer has frequently been interrogated by working men on these lines—

Question: What is the position of the Clerk in the Police Court?

Answer: He is the adviser of the magistrates on matters of law, and he has to record the decisions and take such notes as are required.

Question: What right has he, then, to interfere in the proceedings and tell the magistrates what their decision should be?

Answer: Theoretically no right, but in practice the magistrates are so inexperienced that he has to assist them in their duties.

It is useless to pretend that Clerks do not exceed their strict duties because, to a varying degree, in all magistrates' Courts the Clerk is the dominating personality. To the thoughtful constitutionally minded working man this is another example of the hypocrisy of the governing class. The law says one thing; quite a different thing happens in practice.

There appears to be no supervision over the manner

in which Police Courts dispense justice, and appeal is expensive and ineffective. The following procedure, which in the writer's opinion is irregular and contrary to law, has been practised in certain Northern Police Courts during the last five years. In every Assize Court in which the writer has practised or been present evidence of character and previous convictions after an accused man has been found guilty is given on oath in the witness-box, and the accused man is given an opportunity to question the witness and controvert the evidence. In the Police Courts mentioned an official sits in a corner of the Court with a number of cards in front of him. When the magistrates have discussed their decision, the clerk usually says "Any convictions?" The official stands up with a card and reads out a collection of information on it. The writer has never seen this individual sworn, nor any accused person allowed to question the official about the damaging statements he has made. There seems to be no reason why in these particular Courts the accused man should be denied the protection which is given to accused men in every Assize Court.

The writer's attention was recently drawn to an irregularity arising out of this procedure which is at once more serious and less definite. It is a rule of law that when the magistrates are considering their verdict they shall not know or be influenced by the accused man's previous character and convictions. When the magistrates in the Police Courts above referred to are considering their verdict on the Bench, the official who has previously been mentioned is in full view, and

may be seen fingering a card waiting for the magistrates' decision. It does not require a great intellect nor much observation on the part of the magistrates to draw an inference from this official's behaviour. Although it cannot be said that the letter of the law is broken, the spirit most certainly is.

The worst feature of the Police Court justice is the backdoor influence which the present system permits, and even fosters. An Assize Court Judge when on circuit has a retinue of officials, part of whose duty it is to prevent unauthorized persons from approaching the Judge. Judges of Assize have houses put at their disposal, and rarely go into hotels or other places where they might be brought into contact with the general public, and the underlying principle of these elaborate precautions is to prevent any suggestion of outside influence being brought to bear on the Judge's decisions. To a lesser degree County Court Judges maintain a similar aloofness. The late Judge Sir Francis Greenwell told the writer that he resigned from various clubs on becoming a Judge as he did not think it was consistent with his office to be in personal contact with persons who might be parties to proceedings in his Court.

The average magistrate suffers from no judicial qualms of this kind, and some go out of their way to pick up gossipy information about cases in which they are to act in a judicial capacity. Typical instances of unjudicial methods which are common in Police Courts are—

(1) Some years ago an advocate was walking to a

Police Court when a magistrate overtook him and asked him if he was in the big case. The advocate asked the name of the big case, and was told of a case where a man was to be tried "who had been wanted for a long time by the police," and "who was a slippery customer and a thorough bad lot." The advocate asked the magistrate where he got his information from, and was told that the magistrate had been seeing the clerk some days previously. The advocate was not in the case involved, and could express no opinion as to its merits, but it will be clear to all thoughtful persons that the accused person in that case did not have an impartial trial, that one magistrate had had his mind poisoned (it may be unconsciously) by gossipy statements not made in open Court, and not able to be met even by an innocent man. The writer has very frequently been in Court when magistrates have let fall some comment which has shown that they have received information outside the Court, or which has indicated that they have prejudged the issues before the hearing.

When an accused man says, "I am innocent, but the police have got at the magistrates and I haven't a chance," an experienced Police Court advocate cannot truthfully say that there is no justification whatever for such an assertion.

(2) In a quasi-civil matter triable in a Police Court a barrister advised on facts put before him that the person concerned had a good ground of action, and a summons was issued. The Clerk to the Magistrates before the trial wrote to the solicitors for the com-

plainant saying that he had been in touch with the solicitors representing the other party, and had obtained from these solicitors the facts of the case upon which he would have to advise the magistrates that the complainant had no case. The barrister was of opinion that this letter should be sent to the Lord Chancellor with a complaint, but the solicitors for the complainant were unwilling to adopt so drastic a course. They pointed out that their living depended upon keeping on friendly terms with the Clerk.

The writer has heard of a similar case where a Clerk prejudging the issues of fact wrote to the editor of a legal newspaper for his opinion, and presumably the case was decided upon the undisclosed opinion of the editor of a legal newspaper. As the magistrates never give their findings of fact or reasons for their decisions these backdoor methods are worse in the Police Court than they would be in the High Court, where reasoned decisions are given.

(3) The method of summoning magistrates generally rests with the Clerk of the Court, and benches are not infrequently "packed." The writer has heard a Clerk to Magistrates say to a barrister, "I think you are in the —— case. It is a very bad case. I am summoning a strong bench of magistrates, and they will deal with the case severely." It is a well-known fact that an alleged poacher has little chance of disproving an accusation of poaching before a bench of landowners, and the same thing is true of many other types of case.

(4) Magistrates' Clerks frequently assist the police and prosecuting solicitors in preparing the case for the

prosecution. In one case where a barrister expressed the view that the evidence in a case which was to be tried was not sufficiently strong to justify a conviction, the solicitors' clerk replied that the magistrates' clerk took the view that the evidence was adequate, so that he had presumably seen the witnesses' proofs before the trial.

It should be emphasized that these irregularities in the administration of justice are not wilful perversions of justice by ill-intentioned persons, but are the cumulative result of a lax system of administering justice. From the accused man's point of view it does not, however, matter from what cause the improper administration of justice arises, and he is equally aggrieved in either case.

Many minor irregularities occur and sometimes horrify High Court Judges. A High Court Judge in an Assize case found it necessary to go into details of certain Police Court proceedings, and ascertained that the magistrates, police, and advocates (but not the accused person) shook hands before the proceedings, and the judge expressed concern that irregularities of this kind should take place. This latter irregularity is trifling in comparison with those previously set out.

The remedies necessary are—

(*a*) The complete severance of the magistrates and the Petty Sessional Courts from the police and from other outside influence. The removal of the Courts to a building distinct from the Police Headquarters would assist this change.

(*b*) The appointment of magistrates who are capable

of performing their judicial duties without the assistance of their clerk, who should be a civil servant, and not, as at present, a local solicitor with local connections. An adequate magisterial bench could be obtained by having three panels of magistrates; one of men with legal and judicial experience to perform the function of Chairman and direct the procedure in Court (the present Clerks to Magistrates would in many cases make efficient Chairmen of such Courts); a second panel of men or women with business experience to represent the industrial and commercial aspect of matters involved, and the third panel of men or women with working-class experience. The three magistrates would be equal in status, and would collectively bear the whole responsibility for the decisions which should be given in reasoned form. There is no justification for poor men being forced to accept unreasoned decisions while the rich secure reasoned decisions. An unrestricted appeal system should exist under which an appellant pays a reasonable sum for appealing, but recovers his costs if he is successful. Lastly, no more than three magistrates should sit in any case (one from each panel), and a fee should be payable to each magistrate for the services he performs. Elsewhere the cost of such reforms has been considered, and it is probable that such a reformed system would not cost more than the present system. A stipendiary magistrate sitting alone and holding office over many years is not, in theory at all events, a very satisfactory tribunal, although greatly superior to the provincial magistrates.

(*e*) ADMINISTRATIVE COURTS

The theoretical advantages and disadvantages of administrative Courts have been so clearly set out in Lord Hewart's book *The New Despotism*, Professor F. J. Port's *Administrative Law*, Mr. W. A. Robson's *Justice and Administrative Law*, and Section III of the Report of the Committee on Ministers' Powers, 1932 (Comd. 4060), that no useful purpose can be served by repeating the facts and arguments which may be found in these documents, but observations on the practical aspect of administrative Courts in the North may be of value. It is worthy of note that practically all the authoritative utterances on the subject of administrative Courts are made by men who have had no practical experience of administrative Courts, and their occupations are such as to render it extremely unlikely that they have any first-hand knowledge of working-class conditions.

In general the Northern working man appears to regard administrative tribunals, which usually consist of either a civil servant sitting alone, or three persons (an independent chairman and two Judges representing interests concerned), as fairer and more efficient than the ordinary Law Courts. Of the two types of administrative tribunal the court of three seems to command the greater confidence as it has working-class representation. The advantages of administrative tribunals which appeal to the Northern working man (among others) see their absence of formality, their evident desire to avoid technicalities and get to the truth, the

absence of bullying and the ordeals to which a litigant is subjected in the ordinary Courts, the business-like methods of investigation usually adopted by these tribunals and the absense of rush in trying the cases (a feature which is almost always present in provincial Law Courts).

To most lawyers the fundamental disadvantages of administrative tribunals—namely, their lack of independence, their administration of justice behind closed doors, their subjection to political interference and the other disadvantages mentioned in the documents already quoted—are of greater weight than the more superficial advantages which appeal to the working man. The historical arguments based on the Star Chamber appear to have little weight with the working man, and the despotism which administrative tribunals in their present form might and in some cases do exercise has not yet frightened him so that the tide of public opinion seems likely to flow in favour of administrative tribunals until such time as they show more clearly some of their worst features.

There appears, however, to be no insuperable obstacle to the advantages of the Law Courts and those of administrative tribunals being combined in the same tribunal, or any reason why such improved tribunals should not replace the present-day Law Courts and administrative Courts.

There are two matters worth consideration in connection with the reform of administrative tribunals of the composite type. The first relates to remuneration of members of the Court. The work of these Courts

is frequently of a very important and responsible kind, and the type of person who is required to perform the work must be adequately remunerated if he is to perform it properly. At the present time the independent Chairman is almost invariably remunerated but the other members are not directly remunerated, their remuneration coming indirectly from the Society or Association which pays them and permits them to sit on the tribunals. A system of remuneration whereby the lay members of the Court were paid directly by the State for their services would increase the feeling of personal responsibility and independence which all members of administrative Courts should have. The second matter arises in regard to publicity. A great advantage which many administrative Courts at present possess is the calm atmosphere in which they perform their work. Were the Press and the public freely admitted there would be a great change in the atmosphere in which decisions were considered and given. A close observer can hardly escape the conclusion that judges of the High Court are influenced to some extent by Press reports so that lay members of administrative tribunals, who have political interests and are employed by associations with business connections would be to a far larger extent influenced by Press reports. A modified form of publicity which only permitted the publication of the Courts' decision and reasoning, but not chance remarks during the course of the proceedings, might get over this difficulty. To persons who have been present at trials of *causes célèbres* the reports of the trials which are given in the

sensational Press frequently appear grossly distorted and misleading. Part, at least, of the poor opinion which Northern working men have of justice in the High Court is due to the inaccurate impression which they form from reading sensational accounts in the Press.

The conclusions reached by the Committee on Ministers' Powers in Section III of their Report are accepted by most lawyers as sound, but there are substantial practical difficulties in applying some of their conclusions.

Conclusion I states "Judicial functions should normally be entrusted to the ordinary Courts of Law and their assignment by Parliament to a Minister or Ministerial tribunal should be regarded as exceptional and requiring justification."

Since Parliament is supreme and represents the electoral majority, this exhortation is not likely to have much effect unless public opinion (including working-class opinion) has confidence in the ordinary Courts. The writer has asked numerous workers' representatives why they do not favour the County Court as a tribunal, and their answer is that the average County Court Judge is a London lawyer or a country gentleman who knows nothing about working-class conditions. It is therefore extremely unlikely that the jurisdiction of the County Court will be widened unless a more experienced and representative tribunal is provided.

Conclusion VIII states that there should be an absolute right of appeal on any question of law.

Conclusion x states that there should not as a general rule be an appeal on any question of fact.

One has only to read certain judgments in the House of Lords to know that there are great differences of opinion among the most distinguished Judges as to where the realm of fact ends and the realm of law (or principle) begins, and nearly all learned lawyers agree that there are many questions of mixed fact and law where the principles and facts cannot be disentangled.

Added to the great disadvantage which exists in practice by reason of the difficulty of distinguishing fact from law this arbitrary rule puts great power in the hands of the unscrupulous Judge (and it is fatuous to assert that there never were and are not at present unscrupulous Judges) to prevent appeals. Many important cases, and in particular those where a party is labouring under a sense of grievance, are conducted in an atmosphere of considerable heat, and to allow a Judge whose prejudices have been aroused to prevent an appeal by distorted findings of fact is opening the door to a substantial amount of injustice.

CHAPTER III

SOME GENERAL CONSIDERATIONS RELATING TO THE ADMINISTRATION OF JUSTICE

(*a*) APPEALS

The late Mr. Henry Temperley, a commercial solicitor of considerable experience and a partner in firms of solicitors carrying on business in London and the North of England, told the writer when he first came to Newcastle that the further one got away from London the lower became the standard of justice. This statement raises the implication that the more difficult and expensive appeals become, the less careful and judicial become the Judges.

Sir John Hollams, a London commercial solicitor, wrote about 1906 a book called *Jottings of an old Solicitor*, in which he expressed strong disapproval of the unrestricted right of unsuccessful litigants to appeal, and at present the tide of public opinion appears to be running strongly against giving a litigant the right to appeal.

So far as the North-East Coast area is concerned the writer agrees with the view of Mr. Henry Temperley, and would give to the provincial litigant an unrestricted right (at his own expense) to test the soundness of decisions given against him.

The case for unrestricted right of appeal may be put in this way. In the first place, commercial people, and indeed most litigants, go to the Courts to get their

legal rights established. They do not use the Judge as a kind of human dice-box to give a chance decision. For the latter purpose they can use a coin or other instrument of chance.

In the London Commercial Court, where the highest standard of justice known in England is administered, an unrestricted right of appeal exists, and the proportion of appeals and wrong decisions is appreciable, consequently it is certain that in the rough-and-tumble justice of County Courts and Police Courts the percentage of wrong decisions is very much higher and therefore an adequate system of appealing from the decisions of these Courts is essential unless a substantial amount of injustice is to be tolerated. A youthful and ingenuous barrister recently stated that in most cases both parties were in the wrong, and the Judge's decision might be given without injustice either way. This is an inaccurate and illogical view, since the plaintiff who goes to the Court has to prove that his legal rights have been interfered with by the defendant. Every case, therefore, depends upon whether the plaintiff has proved legal wrong, and unless technicalities are allowed to obtrude, there is no halfway house in civil disputes, and there is definitely a right and a wrong decision.

There are in fact three advantages arising from the right of appeal—

(*a*) The power to get wrong decisions put right.

(*b*) The restraining effect of an Appeal Court's supervision over the conduct of cases in the lower Courts.

(*c*) The elucidation of the law by considered judgments of Courts of Appeal.

In the County Court the most judicially conducted proceedings are those where unrestricted right of appeal exists, and it can hardly be denied that Judges are more careful and judicial where their decisions are open to review by a strong and independent Court of Appeal than where no appeal exists.

No Judge likes being threatened with appeal, because it is an indication of one party's dissatisfaction with the course of the trial, but its effect on the laymen or litigant depends greatly on the manner in which the tribunal takes such threat. In the Commercial Court the writer has seen great commercial Judges treat such threats with equanimity, and even help a dissatisfied litigant to test the decision if he so desire. This attitude strengthens the prestige of the Court, and frequently satisfies the litigant that his case has, in reality, been justly treated. In the County Court and the Police Court a threat of appeal frequently leads to reprisals by the Judges. The Court must show its strength, and any dissatisfaction that a litigant may have in the first place is probably increased tenfold by the reprisals. The fact that these tribunals go out of their way to prevent appeals encourages the view that they know that they are frequently in the wrong.

The writer has known laymen sitting on administrative tribunals say, "We mustn't give leave to appeal here. We might be upset on appeal." This attitude is pernicious. It is in such a case that leave to appeal should most freely be given in order that the lower

Court's decision may be reconsidered, a possible injustice may be put right, and the lower Court may be informed whether it is acting rightly or wrongly. The writer has found that the policy of assisting dissatisfied litigants, if they desire to appeal, has the effect on Northern working men of making them think, "This Judge is confident that he is doing justice, and is not afraid of having his decision re-examined by a higher Court, and so he is probably right," and the attitude actually reduces the number of appeals, while giving more satisfaction.

Lastly, appeals can and do elucidate the law which to-day is more obscure and uncertain than ever before. The laying down of principles by Courts of first instance is rarely very satisfactory, because the tribunal is mainly engaged in ascertaining the facts, and the time element prevents long consideration of their legal effect. Most Judges of first instance dislike reserving more than a very small percentage of their decisions because it throws a greater burden on themselves and delays proceedings, so that their decisions are in the main given at once and without much consideration of the law.

Sir Frederick Pollock writes: "The law is not made by casual and hasty decisions in Courts of first instance. Its guiding principles and the harmony of its controlling ideas must be sought in the considered judgments of the higher tribunals."

If the principle that there shall be the same measure of justice for rich and poor be unflinchingly accepted, the right of appeal should be the same in big and small cases. Regional Courts of Appeal would be

necessary to make such an innovation possible, but there seems no insuperable difficulty in devising an efficient and inexpensive form of appeal for small cases. The Assize system might be remodelled so as to provide a local appeal Court in the provinces.

The arguments against unrestricted appeal are generally based upon one of two contradictory propositions. The first is that all justice is a matter of chance, and the Court of first instance is as likely to be right as the appeal Court, and it appears to be upon this basis that Sir John Hollams founds his argument against appeals. The second argument is that there are really no miscarriages of justice, and practically all appeals are frivolous.

If all justice is a matter of chance, then clearly the litigants might just as well rely on the first toss-up as on the last of three, but the writer cannot believe that experienced observers of English justice can take so cynical a view. One is then left with the frivolous appeal argument. The writer has been at pains to ascertain what constitutes a so-called frivolous appeal, but has received little or no assistance even from those who use the expression most freely. Since an appellant is going to have to pay the costs of an unsuccessful appeal, he is not likely to indulge in an appeal unless he feels dissatisfied with the existing decision and would like it to be reconsidered at his expense. It is, therefore, difficult to say that a substantial litigant who appeals is acting frivolously if he is risking a substantial amount of money in so doing.

A tentative suggestion has been made that any appeal

against the unanimous decision of the Court of Appeal must be a frivolous appeal. Experience does not support this view. Some of the most important decisions in English Law, for example, Bowes *v.* Shand (1877) and Saloman *v.* Saloman & Son (1897) are cases where a unanimous decision of the Court of Appeal has been overruled and demonstrated to be wrong in principle by the House of Lords. Unless these erroneous decisions had been immediately corrected English law would have become distorted.

It may be that in some criminal cases depending on issues of fact and involving no complex law an appeal is frivolous, but even here, where a subject's freedom and it may be his life are in jeopardy, an appeal is not too great a price to pay for ensuring that no miscarriage of justice shall take place.

The real injustices which arise from appeals result from the increased burden of cost which is put upon the party who ultimately loses, by reason of the fallibility of Judges. Whether some indemnity fund could be built up to meet the cost of the Judges' mistakes in successful appeals or not, this disadvantage seems to be overshadowed by the great advantages of an unrestricted right of appeal, more particularly at the present time when a clear and protective law is necessary to encourage confidence and enterprise.

PRACTICAL ASPECTS OF APPEAL

It is one thing to enter an appeal and prosecute it where the appeal Court is in the same building, or

even in the same city. It is quite another matter where the appeal Court is nearly three hundred miles away, and the cost of appealing may be more than the amount involved. It ought not therefore to be assumed that because there are very few appeals from distant County Courts, justice in those Courts is necessarily perfect. Besides the distance factor, there are other practical matters which militate against appeals. In the first place an appeal Court cannot effectively reconsider an inferior Court's decisions unless it has an accurate version of the evidence tendered, and the findings of fact and reasoning of the lower Court. At the present time there is no legal obligation on the Judges of the ordinary courts to take accurate notes, or to record their findings of fact or their reasoning. Two illustrations will suffice. The late Mr. Justice McCardie shortly before his death announced that he would not, in certain circumstances, transmit the notes of evidence which he had taken to the Court of Appeal. In adopting this course it does not appear that he was acting in contravention of the terms of his appointment, although his purported action would have prevented the Court of Appeal from effectively reconsidering his decisions. An analagous case is alleged of a deceased County Court Judge (not in the North-East Coast area) who, when asked to give his reasons for a decision, said, "I do not propose to give any reasons, as I might give bad reasons for a good decision."

These two instances show the despotic attitude which Judges can adopt, although it is only fair to

add that few Judges go to these extremes. In many cases however, for one reason or another, Judges omit to record their findings or their reasons, and there is no power by which a litigant can force a Judge to do what is, in reality, part of his duty.

Unlike the ordinary courts, administrative tribunals are in some cases put under a statutory duty to record the material facts on which their decisions are based and this is done for the express purpose of enabling their decisions to be effectively reconsidered by a superior tribunal. (Vide Unemployment Act, 1934, Sec. 12 (4).)

Every lawyer practising in the lower Courts must be aware of many cases where a tribunal has acted irregularly, or has decided cases on wrong principles, but no appeal is practicable because there is no accurate record of the matter complained of. Unfortunately the appeal Courts encourage Judges in the lower Courts to be lax in recording evidence and findings by assuming that where there is no record, the Judges have acted in a proper way, and that their findings would have been such as would support their decisions. (Vide Owners of the *William and Mary v.* Tilbury Contracting Co. 4. LL. L. Rep. 143, for a Court of Appeal decision on this point.) A critical observer may therefore assert with some justification that there is a tendency for appeal Courts to "whitewash" the actions of inferior Courts.

Turning to the case where the Judge of the inferior Court has stated his findings and reasoning fully, one again finds the most illogical rules governing appeals. The Court of Appeal, in considering a High

Court Judge's decision, has power to upset his judgment either on a question of fact, or upon a question of law, whereas appeal Courts have no power to upset a County Court Judge's findings of fact. Here again a critic may reasonably assert that rich men and poor men are not treated alike. The rich man, bringing his case in the High Court, may have it reconsidered both as to fact and law, whereas the poor man, suing in the County Court, can only have his case reviewed on a question of law.

Working-class men who understand these anomalies almost invariably assert—

(1) That there ought to be no difference in the rights of the poor man suing in the County Court and those of the rich man suing in the High Court.

(2) That all presiding Judges should be under a statutory duty to make a proper record of proceedings before them, and that if a notice of appeal is entered the Judge should be required to make a further statement of the facts and his reasons, so that there can be no excuse for the appeal Court not being in a position to reconsider the conduct of the whole proceedings.

(3) That Courts of Appeal should review decisions unhampered by technical reservations.

(4) That any practice which tends to "whitewashing" irregularities should be discountenanced.

(*b*) JUDGES

It is not an unusual analogy for an English Judge to be likened to an accused man undergoing trial, and

for it to be said that an English Judge is always on his trial, his tribunal being the public. The analogy is not very convincing, since a prisoner who fails to satisfy his tribunal is usually penalized, whereas an English Judge may give great dissatisfaction to the public, or a section of the public, for years without any remedy being available. By a contempt of Court procedure which has been recently developed the Judges exercise a control over the Press which effectively prevents any criticism of an individual Judge, and while this may on balance be a sound state of affairs it allows a Judge almost unlimited powers of giving effect to personal opinions and prejudices, and some check appears necessary.

The working man's remedy for judicial irregularities is a Law Court inspector after the type of the factory inspector or school inspector. This official would be under a Ministry of Justice which would control the Law Courts. The writer deprecates a procedure entailing spying and outside control of tribunals, and would greatly prefer the check on irregularities to come from within the tribunal, or by means of appeal. It is to be noted that a check on the Judges in the past has been the jury, which is now fast disappearing in civil disputes, and needs to be replaced by some other safeguard.

There is a lack of candour among practising lawyers concerning judicial shortcomings mainly because they are afraid of the Judges' power to ruin their practices and thus the public do not get a true perspective of the judicial function.

Some great English and American Judges have emphasized the importance of the personal element in the administration of justice and have urged a study of the subject, but so far it has not received the attention that it deserves.

Mr. Justice Cardozo, a Judge of the Supreme Court of the United States, writes in his book, *The Nature of the Judicial Process*—

"Deep below consciousness are other forces, the likes and dislikes, the predilections and prejudices, the complex of instincts and emotions and habits and convictions which make a man whether he be litigant or Judge. . . . None the less, if there is any reality in my analysis of the judicial process, they (the Judges) do not stand aloof on these chill and distant heights; and we shall not help the cause of truth by acting and speaking as if they do. The great tides and currents, which engulf the rest of men, do not turn aside in their course and pass the Judges by."

An English High Court Judge has put the same idea from a different point of view by saying that no English lawyer can fully appreciate the atmosphere and system of the English Law Courts unless he has read Lord Campbell's *Lives of the Chancellors* and *Lives of the Chief Justices*. The writer finds that comparatively few provincial lawyers and practically no laymen have waded through the ten volumes of these works which illustrate throughout their pages the way in which the personalities of particular Judges have affected English justice for good or evil. The following passage relating to Sir William Scroggs, Chief Justice of England,

is a characteristic passage describing an inferior Judge—

"The Chief Justice Scroggs, a lawyer of profligate habits and inferior acquirements, acted the part of prosecutor rather than of Judge. To the informers he behaved with kindness, even with deference, suggesting to them explanations, excusing their contradictions, and repelling the imputation on their characters; but the prisoners were repeatedly interrupted and insulted, their witnesses were brow-beaten from the Bench, and their condemnation was generally hailed with acclamations which the Court rather encouraged than repressed."

The twentieth-century observer may occasionally see the shades of Scroggs, C.J., on a magisterial or even a more lofty Bench, and the writer would incline to the view that the standard of judicial impartiality is not so high to-day as it was twenty-five years ago by reason of the personal factor which has (to apply Mr. Justice Cardozo's metaphor) been affected by the strong currents of public opinion that have been running since the Great War.

As this book is mainly concerned with provincial justice, it should first be noted that the varying personality of Assize Court Judges greatly affects the standard of justice. The writer has often heard experienced Counsel say in conference: "If Mr. Justice A tries this case we should succeed, but if Mr. Justice B tries it we haven't much chance." The litigant who is paying the costs of the proceedings and whose rights are in jeopardy not unnaturally resents the fact that

his rights and liabilities depend upon the fortuitous circumstance whether Mr. Justice A or Mr. Justice B happens to take the case. This uncertainty is emphasized by the Circuit system under which a Judge who is a criminal law expert, but doesn't know one part of a ship from another, may be required to deal with technical shipping matters.

The relationship of Judge and Counsel is also tainted with a personal element. Counsel themselves know that they are 50 per cent stronger before one Judge than another because of mutually sympathetic characteristics in the one case and mutually antipathetic characteristics in the other.

In Edward Marjoribanks' *Life of Sir Edward Marshall Hall*, and in many other legal memoirs, the clash of personalities on the Bench and at the Bar is portrayed, and with it the injustices which result to unfortunate litigants.

The composite tribunal seems to be an effective means of reducing the personal factor in the administration of justice. If the Chairman of the tribunal shows undue preference for one party or one Counsel it is probable that the other members of the tribunal will, if they are at all independent, counteract the tendency by assisting the other party. A Continental lawyer who had been watching a rather biassed English Judge conducting proceedings told the writer that in a North-European country the personal element was counteracted by having two independent laymen in Court to ensure that the Judge should not show personal bias. They took no part in the trial, but the Judge's decision

was of no effect unless they counter-signed the judgment with a statement that the Judge had shown no bias towards either party. The composite tribunal goes a stage further than this and gives the laymen a direct responsibility in the decision.

In County Courts the personal element probably has a greater effect than in the High Court, except that the inhabitants of each county have a fixed judicial personality with which to deal. Particular Counsel appear almost invincible in particular County Courts, and there is some ground for the rooted belief among working people that if a party has the right Counsel any case can be won. The word "influence" permeates working-class discussion of this aspect of the administration of justice.

In order that a layman may get some idea of how justice has in the past been administered in Tyneside County Courts an attempt has been made at considerably shorter length, but after the manner of Lord Campbell, to portray the characteristics of His Honour Judge Sir Francis Greenwell, who for thirty-five years up to 1931 dispensed justice (within the County Court limits) on Tyneside. The writer's personal observations are limited to the last eight or nine years of Judge Greenwell's tenure of office, but much of the information recorded came from the Judge himself, and from men who had seen him administer justice over a much longer period. As the reader will perceive, the writer had a great personal regard and affection for Judge Greenwell, and if he fell short of being a perfect Judge it was in the writer's view due in no small measure to

a system which requires one man to administer justice in every kind of dispute which may arise in a large industrial area for a period of over thirty years.

Sir Francis Greenwell was born in 1852. He came of an upper middle-class family which had been settled in County Durham for many generations. He was educated at Durham School and Balliol College, Oxford. After leaving the University he was called to the Bar, and came immediately to live and practice in Newcastle-upon-Tyne. From the date of his call in 1877 until his death in 1931 he lived either in Newcastle-upon-Tyne or at Greenwell Ford, a small country house near Lanchester, in County Durham. So far as the writer could ascertain, the Judge had never been abroad, and except for his residence at Oxford and very occasional visits to the south of England he had spent the whole of his life in the counties of Northumberland and Durham. He never had a very large or lucrative practice at the local Bar, and according to his own statement owed his elevation to the County Court Bench to the fact that his father helped Lord Herschell to win a Parliamentary election in County Durham. The writer is loth to believe that so good an appointment resulted from so haphazard a method of selection. Turning to Judge Greenwell's personal attributes, he was a man of exceptional distinction of looks and manner, while his outstanding mental characteristics were simplicity, coupled with a strong dislike of pretentiousness and legal subtlety, and uprightness, coupled with an independence of mind which recoiled against any form of back-door influence.

On one occasion the writer in private conversation spoke to the Judge of an individual holding an official position. The Judge replied, "I have no opinion of the man. He once applied for a post when I was on the Selection Committe. He canvassed the Committee, and tried to bring political influence to bear. Such a man is not fit to hold an important office."

The Judge was a person to whom absolute integrity was essential, and he would never have submitted to any act which he considered underhand.

His interests in later life were bound up in his family house and in the welfare of the mining and agricultural people of Durham and Northumberland, among whom he had lived his life, and for whom he had an unbounded admiration and sympathy. When he had been over thirty years a Judge he would still display the greatest interest and care in the trial of every little case which affected mining and agricultural folk, and in that type of case and in judgment summonses it is unlikely that the North-East Coast Area will ever have a better Judge. He had the advantage of great sympathy with these classes of person and an unrivalled knowledge of their ways. Among Northern working-class people Judge Greenwell's reputation stands apart from that of other Judges. One hears on all sides: "He was fair," "He knew the troubles and difficulties of poor people," and many other similar tributes. The comments on many other Judges are exactly the reverse.

It is when one comes to consider Judge Greenwell's administration of justice in the commercial and

industrial sphere that criticism becomes necessary. The Judge's ignorance in matters relating to commerce and industry had to be known to be believed. After a purely classical education he settled down to a legal practice relating mainly to domestic and criminal matters, and after elevation to the Bench he made remarks relating to commercial and industrial matters which were more in keeping with a schoolboy than with a Judge in one of the great seaports of the world. In this respect Judge Greenwell was not different from many other Judges whose only industrial and commercial experience is that gained at a University, in the Temple, and in a London residential suburb.

A small selection of Judge Greenwell's dicta may usefully be set out for the information of business men.

1. The practice of paying commission to a man who does nothing more than bring buyer and seller together is a pernicious one. Most commission agents are rogues.

2. The limited company is a means by which business men may carry on fraudulent business under an alias, and it should be abolished.

3. No reputable company has an item of goodwill in its balance sheet. (This dictum is contrary to both fact and theory. Many of the most reputable companies have the item in their balance sheets, although they systematically write it down. Further, as goodwill is one of the most valuable assets of businesses, the omission of the item from a company's balance sheet misstates the real value of the company's assets, or, put in another way, amounts to the creation of a secret and undisclosed reserve.)

4. In shipping cases Judge Greenwell was at his worst. He had never been on board a ship at sea, and was not interested in shipping matters, and up to the time of his death he had not mastered even the simpler technical terms. In a case involving a ship in tow, which required careful trying, he started his judgment by saying, "I have never seen a ship in tow, but I imagine that it is like an old lady being dragged along by her pug dog, and I shall decide this case on those lines." This inept analogy caused marine underwriters (who bear the losses in maritime enterprise and make it commercially practicable for merchants and shipowners) great annoyance, and the writer has heard commercial men say that it was disgraceful that such a Judge should be permitted to adjudicate in maritime matters in a great seaport.

Apart from these defects of ignorance, Judge Greenwell suffered from three faults which are very common among County Court Judges—

(1) He went out of his way to prevent appeals against his judgments. The County Court procedure requires a party who contemplates appeal to ask the Judge to make a written note of the point upon which an appeal may be founded. The procedure also makes a County Court Judge's findings of fact unassailable in any appeal Court. An effective way of losing a case before Judge Greenwell was to ask him to take a note of some point. He would almost certainly record the facts in such a way that appeal was impossible. He justified his strong objection to appeals to the writer by saying that appeals were a waste of the litigants'

money, and that his decisions were better than those of High Court Judges, most of whom had twenty years' less experience than he had, and knew nothing of North-country people or their ways.

(2) He attacked witnesses personally on very little justification. Most witnesses have little or no interest in the result of cases, although they tend to support the side by whom they are called and the party with whom they are personally acquainted. Their evidence needs therefore very careful scrutiny, and frequently it is necessary to discard certain witnesses' evidence. Judge Greenwell rarely did this without attacking the witnesses' personal character, and this made witnesses, particularly those of the respectable and independent type, unwilling to give evidence in his Court. The following facts illustrate the harm that such attacks may do: A barrister was briefed in a small case for a workman where the workman's panel doctor was a necessary witness. Shortly before the case came on, the solicitor instructing the barrister rang up to say that the doctor wouldn't give evidence before Judge Greenwell. The doctor had in a previous case been attacked by Judge Greenwell, who told him he was not fit to be a doctor, and had made other remarks which had greatly damaged the doctor's practice, and he had made up his mind never to give evidence before Judge Greenwell again. A compulsory process for requiring a witness's attendance is available, but in the case of an expert witness it is never a wise course to issue a subpoena. Only with great difficulty was the doctor persuaded to give evidence. Judge Greenwell

treated the doctor most courteously on this occasion, and the case was properly tried out.

Particularly in commercial and professional circles men will not willingly give evidence, and give it fearlessly if their characters are going to be taken away because a Judge is not prepared to accept their testimony.

(3) During the last years of Judge Greenwell's life his powers were decaying, and although he nursed his strength most carefully, the quality of justice fell off on account of his declining powers. Had he sat with two other members of the tribunal there would have been no reason why his very great experience should not have been available during his last years, but sitting alone the work was beyond his powers. For some years before his death he read little owing to eye trouble, and the writer is under the impression that he gave away his law library a considerable time before his death, and thereafter dispensed a form of "natural justice."

In spite of these criticisms, the writer is convinced that few men were more suited in physical and mental qualities to perform the work of a judge than Sir Francis Greenwell. Had he sat with two other Judges possessing commercial and technical knowledge Tyneside might have had a commercial tribunal worthy of its industrial and commercial importance, and possibly the lack of confidence in industry and commerce which exists today might have been less. He would have provided the upright independent outlook and the knowledge of law and procedure and the other

members of the Court the technical and commercial knowledge and experience.

The writer cannot part with Judge Greenwell's memory without recording that self-interest and self-aggrandisement played no part in his administration of justice, and that no Judge has done more than he did to maintain the idealism of English law among the Northern working classes. If the depressed areas of Northumberland and Durham are to fight their way back to their Victorian prosperity men of Judge Greenwell's character will be necessary to operate a more democratic and more efficient system of justice.

Since justice must not only be done, but appear to be done, it is important to consider the working man's point of view regarding Judges. Unlike the lawyer, the average working man has had no personal contact with High Court or County Court Judges, although he probably knows personally a number of local magistrates. He forms his estimate of Judges partly from his estimate of magistrates and partly from the description of Judges in books and newspapers. The book which in the writer's experience has exercised the most powerful influence on working-class estimates of English Judges is the *History of Trade Unionism* by Sidney and Beatrice Webb. Nineteenth-century Judges are severely criticized by the Webbs, and the impression left upon the mind of the worker is that the nineteenth-century Judge was a man of the upper class who was hostile to the legitimate aspirations of the working class, and although the twentieth-century Judges have a slightly better reputation for fairness than their

predecessors it is inaccurate in the writer's view to assert that the average working man has complete faith in present-day Judges. The working man not unnaturally desires to have justice administered by men of his own type who will understand his point of view. The history of trade union law and the exclusion of matters relating to the internal affairs of trade unions from the jurisdiction of the Courts provide strong evidence of this point of view.

The composite tribunal appears to be the only corrective for this lack of confidence. A working man sitting on the Bench with men such as the late Lord Sterndale and the late Judge Greenwell could hardly fail to have his estimation of judicial integrity raised, and he would transmit this view to his fellow workers. The main objection to composite tribunals rests upon the ground that there would be differences of opinion among the members of the tribunal, and that these disagreements would cause lack of confidence. The writer doubts whether this argument is psychologically accurate. A litigant usually goes to Court after obtaining legal advice to the effect that he has justice on his side. Machine-like uniformity in decisions tends to raise a suspicion that cases have been prejudged, whereas a reasonable difference of opinion gives the impression that the case in question has been carefully examined from the point of view of both sides. In this connection it is to be noted that the traditional English tribunal of Judge and jury is a composite tribunal, and that the differences of opinion between Judges and juries at various stages in the development of the English legal

system did not seriously damage the confidence of the public in this type of tribunal.

The personal factor in the administration of justice is very aptly summarized by Mr. Justice Cardozo in his book *The Nature of the Judicial Process* in the following passage—

"There is in each of us a stream of tendency, whether you choose to call it philosophy or not, which gives coherence and direction to thought and action. Judges cannot escape that current any more than other mortals. All their lives forces which they do not recognize and cannot name have been tugging at them, inherited instincts, traditional beliefs, acquired convictions, and the resultant is an outlook on life . . . which when reasons are nicely balanced must determine where choice shall fall. In this mental background every problem finds its setting. We may try to see things as objectively as we please. None the less we never see them with any eyes but our own. To that they are all brought: a form of pleading or an Act of Parliament, the wrongs of paupers or the rights of princes, a village ordinance or a nation's charter."

(*c*) JURIES

For several centuries past English administration of justice in civil and criminal proceedings has to a great extent been conducted by Judges sitting with juries. The history of the jury system is a remarkable one, and bears tribute to the Englishman's power of improvisation rather than to his power of scientific

planning. The system has been tried in many foreign countries, and has not proved a success, at all events in civil matters where complicated and technical issues may arise. Even in England the jury as a tribunal in civil cases is fast disappearing.

Nearly all lawyers agree that in the past the English jury has served a very useful purpose in checking ministerial and judicial despotism. The freedom which a citizen enjoys in England today is in no small measure due to the influence of juries in the past, but with the advent of administrative courts and summary justice it is doubtful whether the present-day jury is much protection to anyone. Parliament, if it wishes to take away rights, sets up a Star Chamber type of tribunal presided over by a civil servant, or permits the matter to be dealt with summarily by magistrates, and no jury has any jurisdiction or power to protect the citizen.

As a tribunal for deciding questions of fact or questions of mixed fact and law, the jury has never been a very efficient institution, mainly because of the inexperience of its members. It is generally agreed among English lawyers that an experienced barrister would not advise trial before a jury where his clients had a strong case, but where they had a weak case depending largely upon sentiment, he would almost certainly do so. Continental lawyers think very little of the jury system, and it is not used in either the French or German civil Courts. In the commercial section of the English High Court, which was created in 1895, and to which many foreign merchants

voluntarily submit their disputes, a jury is never in practice empanelled, and were juries to be introduced most foreign merchants would immediately withdraw their cases. The special juries of Lord Mansfield's time were permanent bodies more like the lay members of a composite tribunal than the members of a twentieth-century jury.

Apart from inexperience, conducing to wrong decisions, the jury system has four outstanding disadvantages—

(1) No reasons are given by juries for their decisions, and consequently there is no effective appeal.
(2) The jury system doubles or trebles the costs of litigation.
(3) Juries are unrepresentative of certain classes of the community and consequently tend to be biassed.
(4) Jury service entails an almost intolerable burden on persons in certain classes of occupation.

JURIES GIVE NO REASONS FOR THEIR DECISIONS

The composition of a jury is such that it is quite impracticable for it to give reasons for its decision. Experienced Judges will not even ask the jury many questions because the answers are frequently contradictory, and the uncertainty as to what the jury meant then becomes accentuated.

Examples of contradictory decisions are those of two juries, one of which found in effect that a particular will was valid, and the other of which found that the

same will was a forgery. As there was evidence to support both views, and as the juries gave no reasons for their findings, the cases were unappealable, and the same will was treated both as a valid will and a forgery. There are also cases where an English jury has in effect found that A had sexual relationship with B, but B did not have sexual relationship with A, and the same words published in similar circumstances have been found to be defamatory by one jury and not defamatory by another.

JURY CASES DOUBLE OR TREBLE THE EXPENSE OF LITIGATION

A working man will often ask "Why, when a litigant can go to the Court and state his own case, should he have to bear the huge legal costs of counsel and solicitors?" The answer is, that with a jury as the tribunal of fact and the present formal proceedings a Sergeant Buzfuz type of Counsel can trip up the litigant, prejudice the jury, and almost certainly obtain a verdict for his client against a party who is unfamiliar with Court conditions and is unrepresented. Experienced solicitors and barristers generally agree that in a jury case it is good policy to procure the most effective and consequently the most expensive jury Counsel whom the litigant can afford to brief, and as long as the jury system remains Counsel who can sway juries with rhetoric will be able to earn enormous fees. It is worth noticing that with few exceptions, the well-known jury Counsel have no

House of Lords or Commercial Court practice. Their form of advocacy does not appeal to learned and experienced Judges.

Dean Inge writes: "The enormous fees paid to the most persuasive Counsel are simply the measure of the incompetence of our tribunals. It ought not to make nearly so much difference whether a litigant is able to retain a leader of the Bar or a capable young advocate."

Further causes of increased expense under the jury system are due to—

(*a*) The necessity for not allowing an inexperienced tribunal (such as a jury) to have any evidence other than the "best" evidence of the matters in dispute.

(*b*) The impracticability of adjourning jury cases for long periods.

Before an experienced Judge or arbitrator it is reasonable to allow matters to be proved or attempted to be proved by second-hand evidence because the tribunal will realize the weakness of this form of evidence, and will test it carefully before accepting it. In many cases a Judge or arbitrator will be able to reach a satisfactory conclusion of fact on secondary or indirect evidence, and the trial of a case on this type of evidence will cost the parties very little. The same course is not practicable with a jury of persons of unknown capacity and experience because they may not appreciate the weakness of secondary evidence. Consequently the "best" or most direct evidence alone is admitted at a jury trial, and this involves heavy witnesses' expenses. The writer recollects many years ago a party setting

down a shipping case for trial before a jury. This necessitated bringing witnesses from various parts of the world to London so that they should all be in London on the day of trial, and they naturally had to be compensated for the expense of their journeys to and from London and for their loss of time. Whichever party lost that case would have had to pay thousands of pounds in costs, whereas a similar case in the Commercial or Admiralty Court could have been disposed of by a Commercial Judge on documentary evidence and by means of adjourments for a tenth of the amount in costs, and the result would probably have been as satisfactory.

The power to adjourn a case to allow a necessary witness, who is not present, to be called, or to allow a document, which is not in Court, to be produced also cheapens the cost of preparation of a case substantially. At the present time in a jury trial every document which might conceivably be required has to be available in Court with a number of typed copies for the Judge, Counsel, and sometimes even for the jury. The writer has been informed by solicitors of great experience that were it not for the enormous amount of copying of documents, the cost of preparation of cases for trial might be reduced to a fraction of what it is at present. Under the jury system a Counsel advising on evidence cannot risk his client's case by not having available sufficient copies of every possibly relevant document, as well as every possibly material witness.

JURIES ARE UNREPRESENTATIVE OF CERTAIN CLASSES OF CITIZEN

Many working men, when making their onslaughts on Judges of Assize in such cases as the Dorchester (Tolpuddle) Labourers case (1834), the King *v.* Hammond & Webb (1799), and other cases where working men have been found guilty, although it is difficult to see what criminal act they committed, lose sight of the fact that these decisions are unanimous decisions of juries who must take some part of the responsibility for them.

The explanation of these unjust decisions may be that the juries of those times were unduly subject to the Judge's influence, or that they were antagonistic to the accused workmen. The latter inference is certainly the more likely in the case of the Tolpuddle Labourers because the juries of the post-Napoleonic war period showed Lord Ellenborough and other Judges of that period very clearly that they were not going to be dominated by autocratic Judges, and there appears to have been no reason why an unbiassed jury in the Tolpuddle Labourers case should not have acquitted the accused men. The jury in that case would have been composed mainly of farmers and shopkeepers, and there would have been no manual workers on it, so that the labourers' point of view is unlikely to have received much consideration; thus the most probable explanation for the large number of unjust decisions against working men in the past is the absence of working-class representation on juries.

This state of affairs in a lesser degree exists up to the present day. Lower middle-class citizens who are ratepayers are the predominant type on the average common jury, and as a class they have a strong sense of property rights and are generally antagonistic to the attempts of the manual workers to improve their position. It is probably true also to say of the lower middle class that it is the least judicial and the least idealistic of any class of English citizen.

A certain type of superior lawyer will attempt to counter this criticism by saying that a burglar is not entitled to be tried by a jury of burglars, but the popular view is that English judicial procedure has always contemplated trial by a jury of equals of the accused man, and the fact that a peer of the realm is in some cases entitled to trial by his fellow peers strengthens the popular view.

It might be argued that this fault could be remedied by making jury service co-extensive with the right to vote so that juries were representative of the manual worker as well as of the property owner. This would cause grave hardship, since the average working man cannot afford the loss of wage and cost of travelling which jury service involves. The procedure for summoning jurymen varies in different areas, and is left largely to the discretion of summoning officers. The writer understands that unemployed men, even if liable to jury service, are not usually summoned to serve on juries as they would be unable to defray the cost of travelling between their homes and the Court during the Assize period.

THE ALMOST INTOLERABLE HARDSHIP OF JURY SERVICE

Even among comparatively well-to-do citizens the burden of jury service is very great. A person carrying on a personal occupation cannot in many cases leave his business for days on end without suffering very severe loss, and the writer's impression of the attitude of jurymen is one of grievance at being taken away from their businesses. They are not usually very much interested in the right or wrong of any decision to which they have been a party.

Abolition of juries in all forms of civil proceedings would put an end to a great deal of hardship and loss to jurors, and would not in the writer's view lower the standard of justice if an efficient composite tribunal took its place and gave reasons for its decisions.

In the case of criminal proceedings the accused man should have the right to elect whether he stood his trial before a Judge and jury, or before a composite tribunal of the type already described. Judging by the comparatively few cases in which the right to jury trial is now exercised jury trials would become comparatively rare.

(*d*) PROVINCIAL BARRISTERS

It is often asserted by laymen that the only real difference between barristers and solicitors is one of social status, and that in a democratic age the two professions should be combined. A few lawyers support fusion of the two professions for other reasons, but

a substantial part of the legal profession and many foreign lawyers appreciate the great advantage of having a small body of lawyers who are quite independent of commerce, industry, or other forms of mercenary business. The distinction between the status and functions of English barristers and solicitors can best be brought out by an outline of the history of their development.

In very early times an aggrieved person who desired to invoke the assistance of the King's Courts usually went to the local monastery, which was the centre of learning, and there obtained the assistance of a pleader who was learned in the law. This pleader went to the King's Court with the litigant, and assisted the litigant to present his case, and incidentally helped the King's Justices to do justice. The pleader received no contractual remuneration for his services, although it was usual for the litigant to give some gratuity, and the pleader, being a member of a monastic order, was independent of outside influence. The junior members of the Bar may be said to be descended from these provincial pleaders who appeared in the King's Courts all over England, and to this day a barrister's cloth gown has the pocket in it into which the gratuities were put, and a barrister's fees are still in the nature of gratuities, since a barrister cannot sue in the Courts for the non-payment of them.

The history of the transition from the ecclesiastical provincial pleader to the London lay pleader is both obscure and intricate. In the twelfth century there was a school of law at Canterbury presided over by monks,

but by the end of the fourteenth century the London Inns of Court (or some of them) were in existence and taking apprentices at law.

By Tudor times the lay pleader or barrister as he came to be called had obtained sole right of audience in the higher Courts. He had to belong to one of the London Inns of Court, and was bound by very strict rules which prevented him from engaging in trade, or in any occupation where his independence might be impugned. For the purposes of assisting in the administration of justice in the provinces, barristers followed the Judges of Assize round the circuits offering their services to litigants shortly before the hearing of their cases.

In order that the London advocate and the litigant might be brought into contact and that the cases might be properly prepared before the barrister arrived in the provinces, a second profession, that of solicitor, grew up. In its early days the solicitor's profession was neither very honourable nor very learned, but in course of time it has become as honourable and as learned as the barrister's profession, and it is very doubtful whether any social distinction can be drawn at all. The hall-marks of the barrister are (or should be) his independence of mercenary occupation, in which he is not permitted to engage, and his knowledge of law and legal administration. In return for the disability of not being allowed to engage in mercenary pursuits, the practising barrister has enjoyed the sole privilege of acting as the litigant's advocate in the higher Courts. The solicitor has no

restrictions placed upon him as regards engaging in business, and in fact solicitors are very rarely independent persons, frequently being the agents of business concerns, and themselves directly and indirectly engaging in trade. Except in certain of the lower Courts solicitors are not entitled to appear as advocates.

The advantage to legal administration of having an independent advocate who is at the same time learned in the law is very great, and the writer recollects an American Judge asserting that the high standard of justice in England is largely due to the assistance which the English Judges receive from an independent body of advocates. In America only one legal profession exists, and according to the writer's information a large proportion of the advocates are connected either directly or indirectly with business interests.

The centralized body of London barristers has in the last two generations been broken into by the formation of local Bars at many of the large industrial towns. The centralized system under which barristers were concentrated in London was most inconvenient for provincial citizens, and sooner or later a distribution of barristers in the provinces was inevitable. In London barristers have retained much of their independence by having their offices concentrated in the Inns of Court, and being governed by powerful committees of the leading Judges and barristers. The provincial barrister may and does set up his office anywhere he pleases—even in the annex of a solicitor's office—and the task of maintaining his independence is very much greater than that of his London brother.

Provincial barristers are at present unrepresented by their own kind either on the General Council of the Bar, or upon the Inns of Court governing bodies, but a time must come when their number and strength will necessitate direct representation on these bodies, and their special problems will require to be carefully studied.

At the present time in most industrial areas one finds strong and well-organized associations of employers who are prepared to initiate enterprise and risk money in industry provided that they receive adequate remuneration for so doing, and one also finds equally strong associations of workmen who are determined that their labour shall not be exploited for the sole benefit of a small body of employers. Some independent but well-informed and judicial body of men is necessary to bridge the gap between the conflicting views of the opposing elements in industry, and in the writer's view there is no body of men more suited to perform this work than barristers, although at the present time it cannot be said that the majority of provincial barristers have the confidence of industry. Many provincial barristers hold general retainers for one or more of the large industrial associations and draw the greater part of their remuneration from them, and are, in all but name, their agents. A North-country barrister, supporting the practice of general retainers, recently stated that local authorities and other large corporations must have a barrister who will preserve their secrets, and not act for opposing persons to whom he could disclose their weaknesses, and irregularities.

This proposition proceeds upon the assumption (which may or may not be accurate) that local authorities and large corporations are continually exceeding their powers and acting irregularly, and that an adroit and subservient barrister is necessary to them to suppress and mask these shortcomings.

The conclusions that the writer has formed are, firstly, that the provincial barrister who practises in the lower Courts alongside solicitors has a very great difficulty in preserving the independence which should distinguish him from the solicitor advocate; secondly, that an independent body of lawyers ought to be maintained in the industrial areas; and thirdly, that special rules to ensure the independence of provincial barristers will become necessary.

(*e*) THE COST OF LITIGATION

Barristers as a general rule have very little first-hand knowledge of the amounts which litigants have to pay for litigation, although most of them take a keen interest in the fees which they themselves receive. In public their attitude is that the monetary aspects of litigation are too sordid for their consideration, and accordingly litigation is regarded by many of them as a form of intellectual game, and a case as successful even though the cost entailed to the litigant is out of all proportion to the advantage gained. The stories of doctors who advise £3-a-week clerks to winter in the South of France, and who send telegrams to relatives of a patient saying that the operation was successful,

but the patient is dead, might be applied with an altered background to barristers.

Under the legal system as it exists at present it is frequently extremely difficult for a conscientious barrister to advise a client of moderate means as to whether he should stand on his legal rights or not. Probably every barrister of any experience has had cases referred to him for advice where his client is a man of small means, the amount in dispute is about £100, and the opposing party is a rich and powerful corporation, and where he feels that even though the chances of success are reasonable it is better to abandon the case.

There is first the legal aspect to be considered, viz. (1) What are the true facts and (2) How does the law apply to these facts? It is usually impossible for a barrister to express any very definite view on the facts of cases as they will be found by the Judge or jury, because he has not seen the witnesses, and cannot know how they will stand the ordeal of cross-examination. His opinion is therefore qualified by the statement that, assuming the facts are as he believes them to be, then the result should be a decision in favour of his client, or the reverse. If he forms an opinion favourable to his client, it is, in the writer's view, his duty to consider from a business point of view whether it is wise for the client to bring proceedings. Suppose a litigant has about £1,000 worth of assets in the world, and a doubtful claim for £150. If the costs of establishing the doubtful claim may result in an expenditure of £1,000, so that the litigant will be ruined if he loses

his case, it is obviously more prudent for the litigant to abandon the doubtful claim of £150 rather than risk ruin. The result may well be a miscarriage of justice, but the risks arising from the cost of litigation are too great for a man of moderate means. An inordinately expensive legal procedure favours the very rich litigant and the pauper litigant, and enables them by threats of legal proceedings to obtain considerably more than their lawful rights. It also makes the position of Government officials who litigate with public funds almost unassailable.

Before one embarks on a consideration of the actual cost of litigation in England and the means by which it might be reduced, it is well to bear in mind that efficiency must take precedence over cheapness. Many great Judges have urged this point. English justice has never been very cheap compared with that of Continental countries, but it has usually been substantially more efficient. The ideal system would be one where any aggrieved person could test his legal rights before an efficient tribunal at a cost which was within the means of the poorest citizen, but this is an ideal which is unlikely to be achieved in the near future. There is, however, no reason why the cost of litigation should not be reduced substantially, and the protection of the Courts brought within the financial reach of all except the very poor.

The English system of assessing legal costs has developed in the following way. Originally each party appeared in person, and the only costs were such dues as the King or other authority exacted. Later, with the

appearance of advocates, it was considered equitable that the party who caused the proceeding, i.e. the unsuccessful party, should pay the reasonable legal costs of his opponent as well as his own, and that system remains in force up to the present time. After every action, "taxation," i.e. computation of the reasonable costs of the winning party, takes place. This work is done by taxing masters, and is very difficult work because the word "reasonable" has a very elastic meaning. The writer is credibly informed that most taxing masters allow any expense which is proved by a formal receipt unless it is utterly outrageous or is governed by some scale of costs. This system of assessing costs is not a good one, because each party before the case comes to trial is sanguine of succeeding, and since he expects to make the other side pay does not keep expenses down to a minimum, and by the time the taxing master comes to assess the reasonable costs the money has been spent, and it is only a question of how much each party is going to pay out of the total expenditure.

In the writer's opinion a better system is one which is adopted in some foreign countries, namely, that the successful party shall only get a certain proportion of the amount awarded, or, alternatively, claimed by way of reasonable costs. Such a system would enable a litigant to know exactly how much he would have to pay if he lost his case. Assuming that 20 per cent were fixed as the reasonable percentage, then a plaintiff in claiming £150 would know that in addition to paying his own legal costs (which he can to a large

extent control), he would be liable to pay to his opponent £30 by way of costs if he lost. It must be admitted that the amount claimed in an action is not a true criterion of the work entailed, and there might be small cases where the costs recovered by a successful party were inadequate, but regarding the matter from the litigant's point of view and from the community's point of view, it appears on balance to be a better system than the one at present in force.

It is extremely difficult to give any comprehensive figures to show what the costs of litigation are in practice. The writer feels confident that the figures for *causes célèbres* given in the sensational Press are grossly exaggerated, but in any case they are not applicable to ordinary legal proceedings in a provincial district such as Tyneside. A better guide may be obtained from the figures given by the Special Committee of the Newcastle-upon-Tyne Law Society's Report on Cost of litigation, or those given in Mr. Claud Mullins's book *In Quest of Justice*. The Report shows that it costs a Newcastle-upon-Tyne litigant about £400 to fight an average commercial action in London, or, in other words, an average commercial action costs in all £800. From figures in Mr. Mullins's book and from his own experience, the writer deduces the fact that in the average County Court action each side spends in costs the amount in dispute. Thus a plaintiff claiming £50 and losing his case will have to pay his own costs and £50, or if he wins his case will receive £100 from the defendant, who will also have to pay his own costs. These scales of costs are in the view of most

business men far too high, since to institute legal proceedings claiming sums up to £400 a litigant has to risk at least double as much as he stands to gain, not including the costs of any appeal. In Continental Courts the average cost per party appears to be about 20 per cent of the amount in dispute. In order to reduce the cost of litigation drastically the writer would suggest in addition to a scale of costs graded on the amount claimed or recovered, the following reforms—

(1) *More competent tribunals.*

Efficient tribunals would tend to reduce the importance, and consequently the expense of advocacy. A tribunal gets great assistance from efficient advocacy but it ought not to be paid for on the absurdly liberal scale which has developed since the war. In the case of De Andia Yarrazasal *v.* Willans & Redesdale (1929), Lord Justice Scrutton said, "When I went to the Bar ten guineas for the case and two for a consultation would have been the fee of a leader (King's Counsel) in such a case. . . ." "It is perfectly preposterous to say that in an English Court the proper fee of leading Counsel in such a case as this is £100. . . . To say that you cannot come into Court without paying £170 to Counsel and £70 to solicitors is outrageous." If this "were the standard of legal remuneration the Law Courts would close at an early stage because the costs of litigation set up by the legal profession would be so extravagant that ordinary people could not get justice in the Law Courts."

The state of affairs envisaged by Lord Justice

Scrutton has to a large extent come to pass in the North-East Coast Area. At a recent Newcastle Assize the only civil case tried was one relating to a collision between a motor car and a motor bicycle, and that case represented four months' major disputes in a commercial and industrial community of more than a million persons.

(2) *Less formal proceedings.*

The rules of procedure for the High Court with the necessary annotations occupy a book of more than three thousand pages, and the County Court Rules occupy a book of approximately the same size. By means of these rules an adroit Counsel may harass his opponents and put them to great expense, although his clients have a hopeless case. The rules have been made upon the footing that a party shall not be taken by surprise at the trial, and ought to know exactly the case it has to meet. Before a jury where a long adjournment is not practicable such rules are necessary, but where the tribunal can, if necessary, adjourn the proceeding without great expense these strict rules become unnecessary, and only add to the expense of preparation for trial. The English Commercial Court and Admiralty Courts have for a number of years had a less formal and more flexible procedure than the ordinary High Court, and London High Court procedure is now being remodelled on the Commercial Court plan. As long as provincial centres have Circuit Judges coming to them for a few days once every three or four months no substantial adjournment of cases

will be practicable, and a strict formal procedure will have to remain, with its attendant expense.

(3) *More documentary evidence.*

As has been explained elsewhere in this book it is impracticable to allow a jury to hear any evidence other than direct and oral evidence. A vital witness in a case involving £100 may be in China. To bring him to London to give evidence will cost more than the case is worth, and unless some other method which is substantially less expensive is available litigation becomes oppressive. A competent and experienced tribunal can usually form an accurate view of the facts from a detailed attested statement made by the witness, and the writer would assert that in certain cases a written statement is more valuable than the equivocal oral statements made by witnesses in the witness box.

In some administrative Courts a written certificate by a doctor is accepted as evidence. The writer has found that in many cases a doctor will refuse to give a detailed written certificate where he might come to Court and make an equivocal verbal statement in the witness box. The doctor knows that his medical certificate will be attached to the case papers, and if it subsequently proves that inaccurate statements are contained in his report unpleasant consequences may follow.

In Workmen's Compensation proceedings, where only oral evidence is accepted, and where the cost of medical witnesses is enormous, no exact record of the doctor's evidence is kept, the medical evidence is

almost always contradictory, and much verbal fencing goes on.

The following hypothetical case is a typical example—

A workman whose work takes him up heights has a heavy fall and injures the base of his skull. His employers pay him the Workmen's Compensation allowance for a few months and then stop or attempt to stop payment, alleging that he has completely recovered. The workman says he suffers from giddiness, and his own doctors are of opinion that work at a height is no longer suitable for him. In Workmen's Compensation proceedings the employers call a well-known specialist, who goes in the witness box and says in examination-in-chief. "I made an examination of the workman on such and such a day. He complained of pains, dizziness, etc. As a result of my examination I see no reason why he shouldn't work at a height." In cross-examination he will probably be asked, "Will you give the workman a certificate which he can present to his employers stating that he is fit and able to work at a height?" The answer would almost certainly be, "I don't give certificates of that kind. His own doctor must do that."

The writer has heard it said that a doctor on one examination of a workman would be most unwise to give such a certificate. If that is so, the doctor's evidence in the witness box is not of very great value.

When a tribunal accepting documentary evidence was dissatisfied with the documentary evidence it could ask for further documentary evidence, or require the vital witnesses to attend in person. The reception

of documentary evidence would reduce the great expense which at present arises from the long periods during which expert witnesses and other witnesses have to be in attendance at the Court.

Better organization of the Court procedure.

No unbiassed observer could deny that in English Courts the convenience of the Judge overrides all other considerations. Favoured Counsel may occasionally have their interests regarded, but the poorer litigant gets no consideration at all. In most Courts even where there is a long list of cases and the Judge has private business to transact before commencing to sit in public, all the parties are summoned for 10 a.m.

The following is an actual case. The parties in a long list of cases were all summoned for 10 a.m. At about 12.30 p.m. the Judge commenced public business. About 5 p.m. a poorly dressed woman came up to a barrister who was in wig and gown outside the Court and begged him to ask a Court official when her case would come on. She had left her home and young children about 8 a.m., and her husband had told her she was not to leave the Court until the case was decided, as if she left, judgment would be given against them in her absence. She didn't know what would be happening to her children during her absence. The woman's case was in fact last in the list, and in a properly organized system there could have been no reason to summon her before 2 p.m. The minor Court officials are all so

afraid that the Judge may be kept waiting five minutes that hundreds of poor people are kept away from their homes and businesses for much longer than is really necessary for the purposes of justice. This not only causes dissatisfaction, but increases expense.

In administrative Courts parties are usually summoned at regular intervals, and business-like methods are employed to save the litigants and their witnesses undue loss of time. There seems to be no reason why in the High Court and County Court parties and their witnesses should not be summoned to the Court at varying times according to the position of their cases in the day's list of work.

Trial of cases at a centre close to the place of residence of the parties.

At present important commercial and industrial cases arising on Tyneside can only be tried adequately in London, the Assize procedure being too uncertain. That means taking to London the parties, their solicitors and witnesses on the day before the trial is likely to be in the list of cases.

The expense and inconvenience in connection with the trial of a Tyneside case in London has to be experienced to be fully understood. Some days before the case is likely to be in the list all the persons engaged have to be warned to be ready at a moment's notice to go to London, and to make all their engagements in the next few days contingent on not being away in London. The daily list of cases for which parties and

witnesses are required to be in London is settled at about 4.30 p.m. in London on the preceding day, and by very efficient organization the information contained in the list may reach Newcastle-upon-Tyne in time for parties and witnesses, who are ready and waiting, to be in London the following morning. A provincial case may be just in or just out of the list of cases for trial for a week or more, particularly if eminent counsel have had the list altered to suit their convenience. Friday is a very unfortunate day to arrive in the daily list, because in all probability the case will not be tried before the following Tuesday, and the parties and their witnesses will have either to return to the North over the weekend, or be maintained in London.

Professional men do not undergo the inconvenience and loss of time involved in London cases, unless they are adequately remunerated and all their out-of-pocket expenses met, consequently only the most important Tyneside cases are tried out in the Law Courts, the remainder being settled by some "man to man" process.

A permanent local Court with an unlimited jurisdiction would assist commerce and industry because it would enable the smaller and poorer firms and businesses to get justice at a reasonable price and without dislocation of their office organization. Tyneside operates at a disadvantage today with other similar ports, such as Hamburg and Marseilles, which have local Courts within easy reach, where commercial disputes can be quickly and cheaply decided, and there

seems to be no reason why the present inefficient procedure for Tyneside should continue.

(*f*) POOR PERSONS PROCEDURE

Both branches of the legal profession are conscious that the expense of undertaking legal proceedings is so great that lack of means on the part of a wronged person may cause a denial of justice. There has therefore been established a "Poor Persons" procedure by which a person, who makes a declaration which states in effect that the signatory has neither £50 in the world, nor a usual income of £2 per week, can obtain free legal assistance. The Poor Persons committees have power to increase these limits in deserving cases. This Poor Persons procedure does not apply to County Courts.

As an emergency and temporary measure too much praise cannot be given to this scheme, nor can the generosity of the lawyers who give their time for nothing in order to make the scheme possible be overrated. As a permanent scheme, or as a solution for the high cost of litigation, the scheme has not much to commend it. In the first place it only affects persons who are not possessed of £50 worth of assets, or a usual income of less than £2 per week, so that the thrifty self-reliant workman is excluded unless he will stoop to some subterfuge such as transferring his property to a relation. The scheme also introduces the charity element which is much disliked by the self-reliant North-country type. On a number of

occasions the writer has been told by men, "I don't want to be treated as a poor person, but I cannot afford to pay very much, as I only have a wage of 40s. per week," and there can be little doubt that the desire to "pay their way" and not be beholden to anyone is very widespread among this type of man. Unfortunately the gulf between paying nothing and paying the ordinary costs of legal proceedings is a very wide one, and even retired Army officers with pensions have had to rely on the poor persons procedure.

Other grave disadvantages are, firstly, that the system tends to make lawyers overcharge the well-to-do so that they can do the work of the poor for nothing, thus further increasing the already high standard of costs. The following is a concrete example: A great number of "poor persons" divorce cases are done by counsel, and it is generally arranged that a counsel who has some paid cases shall undertake a number of "poor persons" cases. To a barrister with experience there is very little difficulty in undefended divorce cases. The result of a day's divorce work may be two paid cases with five guineas remuneration in each cases and eight cases (poor persons) with no payment, giving a gross remuneration of ten guineas for ten cases. As each case only takes a very few minutes, the five guinea fee is in reality too high. Most of the "poor persons" could in fact pay a guinea for counsel's work, so that under a cheap and efficient legal system the barrister could get the same gross remuneration (viz., ten guineas) if each litigant paid the reasonable sum of one guinea for the services he has received.

Secondly, lawyers' work becomes undervalued by being done for nothing. Solicitors have often told the writer that "poor person" clients are frequently more domineering and unreasonable than clients who are paying the full cost of litigation. The writer has found that there is a class of poor persons who regard the gratuitous service of lawyers as their right, and he has heard working men assert that lawyers should do all their work for nothing, although these men do not explain how lawyers are to live if they receive no remuneration.

The writer also finds that reactionary lawyers use the persons' procedure as a cloak for faults in the legal system, and they counter justifiable criticism by saying, "Yes, but what about our excellent charitable arrangements for poor persons?"

CHAPTER IV

INEQUALITIES OF ENGLISH LAW

(*a*) A GENERAL OUTLINE

Sir Edward Coke described the Common Law of England as the perfection of reason. While this description is a trifle extravagant it can be said that the English Common Law is a reasoned development of three principles which are inherent in the Anglo-Saxon sense of justice, namely—

(1) Equality before the law, i.e. no privilege.

(2) Freedom of the individual providing that he does not interfere with the freedom of other individuals.

(3) Sanctity of contract, i.e. the carrying out of solemn undertakings.

Except with regard to the position of married women under the Common Law it is difficult to make any very successful frontal attack on the principles of the Common Law although there has been a certain amount of distortion due to erroneous decisions having been grafted into the law. The reputation of the Common Law among working-class people is not high, because it has been systematically abused by politicians and blamed for most of the troubles from which working people have suffered. Statute Law (the creation of politicians) on the other hand has an unjustifiably high reputation among working people, although particular statutes are greatly reviled.

In point of fact, English Statute Law during the

past fifty years has been engaged in creating privileges, destroying personal freedom and interfering with contractual obligations, and many of the injustices from which the working class suffer are directly traceable to well-intentioned but ill-conceived legislation, and not to the Common Law of England as it has been interpreted by the Judges.

The following are four examples of unjust laws created by Statute. A very great number more could be quoted.

(1) Under the Unemployment Insurance Acts a manual worker is compelled to contribute to the unemployment insurance fund. When he becomes unemployed he may be the type of worker who prefers any form of work to idling and he may try to obtain jobbing or other non-insurable work on his own account. It is just and equitable that while he is working on his own account any right to unemployment benefit should be suspended but should his efforts in the non-insurable field of labour fail he ought to get the benefit of his previous contributions to the unemployment insurance fund. The present position is that any man who tries to keep himself off the public funds by uninsurable work takes a great risk of being treated as having abandoned insurable employment and having lost the benefit of his insurance contributions over years. A law more unjust to the enterprising man and more damaging to the community is difficult to conceive. The writer knows of cases where a working man has risked and lost his savings in an endeavour to keep off the unemployment insurance fund and has

thereby lost not only his savings but also his right to draw benefit from a fund to which he had contributed for many years. As the law stands it is far safer for a workman to remain idle receiving benefit from the fund than to go abroad for work or attempt to make work for himself. The foundation of new industries by the artisan class is definitely prevented by the advantages which are held out to men who do not try to help themselves. It ought not to be beyond the powers of draughtsmen and legislators to devise provisions by which the enterprising man gets at least as fair treatment as his unenterprising fellow citizen.

(2) The general effect of the betting laws is that a man who has a telephone and credit or can personally attend racecourses may bet with impunity, whereas a man who has not those facilities but engages in exactly similar transactions for cash in a street or a "resort" is guilty of a criminal offence. This is a clear case of one law for the rich and another for the poor and is difficult to justify. The writer has been told by a magistrate who is interested in racing that he dislikes sitting on the Bench and fining poor men for betting transactions of the same type as those which he, in the luncheon adjournment, is himself going to transact. The manifest unfairness of this law causes great bitterness.

(3) Statute law has for a number of years enabled local authorities to purchase compulsorily land which they require at a fair market price and this measure appears just and necessary. The Housing Acts go a great deal further and enable local authorities to

take over land and houses in "scheduled areas" on payment to the owners of the site value less the cost of demolishing the buildings on the site. As the cost of demolition frequently equals the site value owners of scheduled houses in effect have their houses and property confiscated. Not infrequently working men have put their life's savings into a house in the area where they live. If this area is scheduled under the Housing Acts it means confiscation of the workman's home and his savings. The politician assumes that houses in slum areas always belong to slum landlords whereas many houses in the poorer districts are owned by working men and represent their life's work.

(4) Where a trading corporation or a private individual commits a legal wrong and injures a third party, the injured party has six years in which to bring an action at law and recover compensation. Having regard to the serious nature and gradual onset of some injuries six years is not too long a period to allow. In practice one gets cases of poor men who have been severely injured taking twelve months to recover from their injuries and collect the necessary funds for ascertaining their legal position and for prosecuting an action against the wrongdoer. One does not find that efficiently conducted trading corporations are in any way embarrassed by the multiplicity of claims against them by reason of the six-year period.

The Public Authorities Protection Act 1893 provides that an action in respect of a wrongful act done by a public authority can only be brought within six

months of the doing of the wrongful act and further in the event of a claimant proving unsuccessful in a claim against a public authority he must pay a higher rater of costs than he could recover himself or than he would have to pay if he sued a private corporation.

It is extremely difficult to see why public authorities should have these special privileges. They have legal departments and almost unlimited financial resources and the Act appears to be one to protect the rich and powerful against the weak and poor—"real governing class legislation" as a worker would put it. Apologists for the Act assert that its object is to protect the public purse from that section of the public which regards any governmental institution as fair game for baseless claims, but this argument will not bear examination. An efficient legal system will protect governmental institutions from baseless claims without any privileges being conceded. The injustice which the Act causes is very real. A man with a dependent family may be seriously injured by the wrongful act of a public authority and linger between life and death until the time for making a claim has gone and he and his family will thus suffer the greatest wrong and yet not be able to recover anything.

Again why should a claimant who believes that he has a legitimate claim against a public authority have to pay more in costs if he loses than he can recover if he wins? Such a law tends to cause oppression by giving to persons, who already have an advantage by reason of their wealth, privileges which are denied to

the poor. The unfairness of the law makes its administration more difficult and accounts in part for the reluctance of Judges to give reasons for their decisions since the more they say the more palpably unjust the decision appears.

The writer's experience leads him to the view that it is among the more thoughtful and the more independent of the Northern working class that the dissatisfaction is now greatest and the desire for a complete change in the structure of the community is strongest. An elderly woman, who sits on an administrative tribunal, has spent her whole life in an industrial area and knows a great deal more of the Northern working people than the writer is ever likely to know, gave it as her considered view that the people who have suffered most in the Northern towns in recent years are the better-class working people who try to maintain their independence. These men and women, who are in reality the backbone of the working class, get little or no protection from the law and as the above examples show are frequently most unfairly treated by it. The bitterness engendered by the unfairness of the law is intensified among them by the apparent complacence of the leading Judges and lawyers.

The majority of Judges and leading London barristers are ignorant of the social legislation contained in modern statutes because the High Court has no jurisdiction in these matters, there are no large brief fees obtainable by Counsel and much of this law is administered behind closed doors.

The following are examples of ignorance in high places—

(1) A High Court Judge at Assizes is reported to have asked a policeman witness a point of unemployment insurance law.

(2) A working man and a member of a Court of Referees was on the election committee of an eminent barrister who desired to represent in Parliament a North-country constituency. The working man asked the barrister to explain certain anomalies in unemployment insurance law. To the working man's amazement the barrister knew nothing whatever of unemployment insurance law. In the average working man's view the law relating to such subjects as unemployment is of far more public importance than the law relating to (say) property rights and the fact that eminent lawyers do not study the law relating to unemployment convinces him that most lawyers are out for money only.

A remedy for unfair laws and the dissatisfaction which they cause lies in a greater study by all classes of person of the principles of the law and a dispassionate examination of the way in which particular laws operate. This in turn can only be achieved by more public administration of the law and by a greater decentralization of the administration of justice. A working man described the present system to the writer in the following way: "If a working man on Tyneside suffers an injustice in 1931 a judge will probably give his decision on the case in 1933 in London. London people will not be interested.

Tyneside people will have forgotten the circumstances of the injustice, if they ever hear of the judgment, because thousands more injustices will have been done in the meantime."

(*b*) THE WORKMEN'S COMPENSATION ACTS IN OPERATION

The basic principle upon which the English Workmen's Compensation Acts are founded is that employers shall be required to act as the insurers of their workmen against injury resulting from industrial accident. An employer may re-insure his liability with an insurance company or association but (except in the case of one industry under a very recent Act) he is not compelled to do so. The most important feature from the workman's point of view is that it provides an insurance for the workman against industrial accident and no question of negligence, i.e. breach of duty, of his employer arises.

The first Workmen's Compensation Act was passed in 1897. It was copied from German legislation and made a great change in the English law relating to master and servant, creating what amounts to a compulsory insurance provision under which the employer has to pay to the workman benefit at specified rates in the event of the workman being incapacitated by industrial accident.

Among working men the Workmen's Compensation Acts at present in force are regarded as a step in the right direction but it is frequently asserted that their

present provisions are inadequate and that employers are able to evade their liability. Employers complain not so much of the principle upon which the Acts are based as of the manner in which the Acts have been interpreted and the methods of adjudication. The writer sees a good deal of truth in both the workers' and the employers' criticisms and attributes the inequalities which undoubtedly exist partly to ill-considered legislation, partly to faulty interpretation of the law and partly to bad administration.

In the case of a statute which concerns working men, it is highly desirable that the clearest possible wording should be used. In this connection the title given to the statutes is misleading to working men and it is unfortunate that the insurance element is not brought out in the title. The present title suggests that compensation is being given to workmen for some wrongful action and the writer has heard so many small employers and workers' representatives assert that a wrongful act must be proved before workmen's compensation can be claimed that he attaches more importance to the title of the Acts than academic lawyers do. The following are the broad facts of a case which the writer tried as Deputy County Court Judge and which shows the hardships arising from a misconception of the law.

An unemployed man of the working class commenced a small business on his savings and so well did it progress that it was possible after a time to employ a second man in carrying out the orders. While the two men, the employer and the workman were working

side by side, an accident happened to the workman and subsequently a claim was made for compensation by the injured workman. There was in law no defence to the claim but the employer went into the witness box and, in addition to corroborating the above facts, stated that he had taken as much care of his employee's safety as of his own and produced figures showing that the profits of the business at the time of the accident were so small that the workman's claim, if it succeeded, would ruin the business. It was quite clear that he was ignorant of his liability as the insurer of his employee. The workman obtained his award but it is doubtful whether he obtained any money. The closing down of even a small business in a depressed area and the throwing on to the Poor Law of the employer and his family cannot be regarded with equanimity. The fault here lies not in the principle of the law but in the fact that the law is not so clearly stated as to be known to the general public.

INDUSTRIAL RISKS

Since the Workmen's Compensation Acts provide an insurance for the workman it is important to specify clearly what risks the employer has to bear. The Acts define the accidents for which compensation must be paid as "acidents arising out of and in the course of the employment." These words appear clear enough to the average layman: nevertheless more than a king's ransom (to use Lord Justice Scrutton's words) has been spent in litigation as to what is an "accident"

and whether it "arises out of and in the course of a workman's employment." The results of judicial interpretation are so unsatisfactory that many practical men are of opinion that the trade unions and insurance companies which have provided the "king's ransom" have gained very little thereby.

Before giving in detail an example of a miscarriage of justice it is desirable that the causes of unsatisfactory interpretation and administration of the law should be stated. In the first place the question whether a particular accident is within the statutory definition or not is decided by a County Court Judge sitting alone. In many cases he is handicapped by the fact that the workman is unrepresented and has neither the knowledge nor the means to adduce evidence such as is necessary to support his case. To overcome this difficulty it has been judicially decided that County Court Judges may use their own knowledge of industrial conditions and of the district. The majority of County Court Judges have no industrial or commercial experience and have lived their lives in the residential suburbs of London and on becoming County Court Judges have adopted the existence of country gentlemen. Their findings of fact are accepted as final by the appeal Courts and much of the confusion and injustice in this branch of the law arises from Courts of Appeal accepting as conclusive, inaccurate inferences drawn by County Court Judges.

A further cause of injustice in this branch of the law is the use of "armchair tests" which are constantly

being laid down and applied in the appeal Courts. In very many cases these tests are quite inapplicable to the actual conditions of the industry concerned but they are seized upon by County Court Judges as a ready means by which to decide difficult cases. The results thus obtained are frequently a negation of the principles of the law.

It should also be noted that in many cases judicial dicta are contradictory of other dicta of equal standing and sometimes are contradictory of the apparent meaning of the words of the statutes. The following is an example of the latter type. From the time of the passing of the first Workmen's Compensation Act there has been heated controversy as to the legal position of a workman who suffers an injury while he is doing something which is outside his duty or is contrary to the rules laid down by his employer. The inexperienced moralist asserts loudly that a disobedient workman should recover nothing. The more experienced observer takes a different view because he realizes that conditions of employment vary widely, that employers' rules are frequently drawn ambiguously and not brought to the notice of workmen and that the workmen who are killed or seriously injured while exceeding their duties are often keen workmen who have been taking undue risks in their employers' interests.

Augustine Birrell, a prominent lawyer and a member of the House of Commons which passed the first Workmen's Compensation Act, said in a lecture given on the principles of the first Act in 1897: "We are all

moralists in the lower branch of the Legislature and both sides agreed that as a matter of morals the man who alone had occasioned an accident by his serious and wilful misconduct ought not to be allowed to get a penny out of it. To the height of this great argument we all arose and I with the rest though, remembering as I did, that in the majority of these cases the guilty author of the accident is the first to perish by it, thus at once escaping from the jurisdiction of a Judge of County Courts and how too frequently he leaves behind him in sorry plight a widow and infant children, my passion for punishment, my lust to indulge my moral sentiments was not so violent as it seemed to be in the case of austerer persons."

Between 1898 and 1923 there were many hard cases of courageous and enterprising workmen losing their lives in industry and their dependents receiving nothing by way of workmen's compensation because it was asserted by the employers and accepted by County Court Judges that the workmen were undertaking perils outside their employment. Later Parliaments have applied Birrell's less austere view and by Sec. 1 (2) of the Workmen's Compensation Act 1925 it is enacted: "For the purposes of this Act an accident resulting in the death or serious and permanent disablement of a workman shall be deemed to arise out of and in the course of his employment notwithstanding that the workman was, at the time the accident happened, acting in contravention of any statutory or other regulation applicable to his employment or of any orders given by or on behalf of his

employer or that he was acting without instructions from his employer if such act was done by the workman for the purposes of and in connection with his employer's trade or business."

The average layman reading this subsection would understand it to mean that where a workman lost his life or was seriously or permanently disabled while doing an act for the purposes of and in connection with his employer's business, the accident was to be regarded as one arising out of and in the course of the employment *notwithstanding that the act was unauthorized or forbidden.* That is not the view taken by learned Law Lords. By a process of reasoning which is hyper-subtle and by applying old cases which are said to be still good law although decided under repealed Acts of Parliament, an over-zealous workman's dependants may still have their claim disallowed on the ground that the workman was in an unauthorized place at the time when he met with his accident. In the case of Stephen v. Cooper in 1929 Lord Hailsham stated the following proposition (which in the writer's view is contrary to Sec. 1 (2) of the Workmen's Compensation Act 1925): "It is well established by a series of decisions in your Lordships' House that apart altogether from the question of serious misconduct, if the accident arises from some peril to which the workman has exposed himself by his own conduct and which he was not obliged to encounter by any term of his contract of service the accident cannot be said to arise out of his employment." Whether Lord Hailsham meant to state the law so

widely or not, and give no effect to Sec. 1 (2) of the 1925 Act, the passage is much used to defeat cases which in the writer's opinion, were intended by Parliament to be covered by Sec. 1 (2) of the 1925 Act.

The following is a typical case arising out of a shipyard accident and will give the reader some idea of the injustice and uncertainty of the present-day administration. About 7.30 a.m. on working days small groups of unemployed men may be seen standing outside the gates of the large Tyneside shipyards waiting for employment. If any fresh work is being started a foreman will go out and choose the men he requires. "Here Bill, I want you," are the words with which a shipyard labourer may be engaged and without further ado the workman goes into the yard and commences work. The writer has asked employers and trade union officials what they understand as the "terms of the workman's contract of service" (Lord Hailsham's test) in such circumstances, and the answer is that the workman is bound to do any work required of him and will be paid the standard wages of his grade. In most courts of law a term would be read into the contract of service that the workman has to read and obey all the notices, regulations, and rules which are posted up in the shipyard. Large Northern shipyards occupy many acres of ground and the organization, although extremely efficient, is both decentralized and democratic. The men work in squads frequently choosing their leader and dividing their pay according to their own arrangements and, in order to appreciate the conditions in which accidents

happen, it is necessary to have experienced the bustle and roar of a shipyard when a big ship has to be ready by a certain tide and to have seen the tired squads of workmen worn out during a night shift bracing themselves to a last effort before the shift ends. It is in circumstances such as these that our shipyard labourer "Bill" may be sent by his superior at night across the shipyard to the tool store and may be found dead the next day in a dry dock which lies close to the direct line between his squad and the tool store but inside an area containing notices forbidding unauthorized persons to approach the dock. To a practical working man such an accident is so clearly an industrial accident that it defies argument but the lawyer must approach the matter by means of arm-chair tests. Was it part of the workman's employment to be in this unauthorized place? Did he go into it for his own purposes or in connection with his employer's business? These are questions which the County Court Judge (who may once have been in a shipyard in daylight) will put to himself and unless the deceased workman was a member of a trades society, the only material evidence on which the Judge will draw inferences will be obtained from the employers' witnesses and they will produce copies of the notices put up round the dock and of rules and regulations of which it would be most unlikely that Bill had any knowledge. There are judicial dicta by means of which Lord Hailsham's dictum may be circumvented, for example by a finding that there was an emergency at the time, the workman's presence

in an unauthorized place may be excused. A kindly County Court Judge oppressed by the hardship of the case might find as a fact that there was an emergency (although in reality there was none). If, however, the County Court Judge finds that the workman met his death in a place where he had no right to be and where he was for his own purposes, the claim of the workman's dependants will fail and, to use the words of Birrell, the employer can say to the dependants "Get thee to the workhouse: thy man was a careless rogue."

Perhaps the most astounding feature is that if "Bill" had been suffering from an advanced stage of heart disease and had fallen dead while walking to the tool store, his death would almost certainly be found to be an accident arising out of his employment even though all the doctors called stated that his physical condition was such that he might have died at any time. In these latter circumstances employers have a distinct grievance as death from the gradual onset of a disease does not arise from industrial accident. In addition the treating of incapacity or death due to diseases (not arising from industry) as industrial accidents prevents many men from being employed who are expert at their trade. In many cases insurance companies lay down conditions under which an employer may not employ men suffering from particular diseases or disabilities in no way connected with the industry carried on, because such diseases or disabilities are liable to give rise to workmen's compensation claims in the present distorted state of the law.

MEASURE OF COMPENSATION PAYABLE TO AN INJURED WORKMAN

The Acts provide that where a workman establishes a claim to workmen's compensation he shall be paid a weekly sum equal to half the difference between his pre-accident and his post-accident earning capacity with a maximum of thirty shillings per week. The pre-accident earning capacity of an injured workman is fairly easy to ascertain because fixed rates of wages exist for various grades of workers and the employer can usually provide a record of the worker's previous wages. The computation of the post-accident earning capacity must in any case be extremely difficult but the problem is rendered almost insoluble by two armchair maxims propounded by learned Judges. The first is that it is not the injury but the loss of earning capacity which must be considered, the second is that the state of the labour market must be excluded, a normal labour market (whatever that expression may mean) being assumed.

Under a system of industry in which wage rates for any particular grade of worker are fixed the injured man's main chance of obtaining employment depends almost entirely upon the labour market. If there is a shortage of labour, the injured worker who can do his pre-accident work at all will obtain the same wage as the able-bodied worker, but should labour become more plentiful or orders fall away, the injured man will be among the first to be discharged and the last to be re-engaged.

The following case is typical of many hundreds of cases. In the early part of the war X, a ship's fireman, was seriously injured in an industrial accident as a result of which his left hand was rendered almost useless. After he had recovered from the accident he could, with some difficulty, use a shovel, employing his left hand as guide. His employers paid X full compensation until his hand had healed when, owing to the fact that labour was very scarce and seafaring not a very safe occupation in war-time he was able to resume work. After he had been at work for some time his right to compensation was terminated because he had recovered his pre-accident earning power. After the boom period had ended X was discharged. No sensible employer would engage a partially disabled man while completely sound men were available, and as long as the labour market is over-stocked a partially disabled man such as X is unlikely to obtain much employment. X gets no compensation because a County Court Judge assumed (quite erroneously) that the labour market was normal during the war.

The injustice of these armchair rules is accentuated by two further circumstances, viz. (1) that the injured man who makes the necessary effort to obtain employment in spite of a serious injury is penalised since his extra effort tends to increase the computation of his post-accident earning power. In the above example, if X had refused to go to sea after his disablement, very few County Court Judges would have had the courage to say that he was unreasonable and he would throughout the war and possibly for the rest

of his life have drawn a substantial weekly sum by way of compensation. (2) That the present rules put into the hands of the employer a power to deprive a workman of his legitimate compensation by giving him regular work over a considerable time in what is alleged to be normal employment and then applying to terminate the workmen's compensation on the ground that he has completely recovered his pre-accident earning power. The workman cannot easily resist such an application and frequently his employment ceases abruptly after his right to compensation has been terminated.

The writer, in investigating the industrial records of many thousands of unemployed men in an area where heavy industries predominate, has been struck by the number of injured men who are receiving nothing by way of workmen's compensation although they are suffering from serious injuries resulting from industrial accidents. A large part of these men lost their compensation through resuming their normal employment during a boom period.

A clear remedy for this injustice is to sweep away the present rules and armchair maxims and replace them by rules designed to meet the injured workmen's needs during (*a*) the time in which he is recovering from his injuries and (*b*) the period during which he is suffering from a permanent disability. During the first period the full wage might reasonably be made payable. At the end of six months or as soon as the injury has healed and the incapacity become static either party should be entitled to apply for an award

to be made assessing the injured man's capacity for work on a percentage basis having regard to his physical disability. This assessment should be made by a composite tribunal having legal, industrial and medical experience and should not be affected by considerations of employment which the injured man has been able to obtain. Reverting to the fireman case described above, a permanent disability of approximately 45 per cent existed and compensation should have been payable on that basis and regardless of his employment during the war and immediately afterwards.

Regarded from the point of view of the public it is all to the good that workers who are partially incapacitated should be encouraged to find employment and to make even greater efforts than the able-bodied men to support themselves. The present rules have precisely the opposite effect. A ghastly game lasting sometimes over years goes on in which the employer is expending large sums in medical examinations to have the worker declared fit and the workman dare not or sometimes will not attempt to adapt himself to special work for fear of losing the compensation to which he regards himself as entitled.

The views expressed here are occasionally stated in the House of Lords. Lord Sumner said in a passage already referred to (Dennis *v.* Midland Rail Co. 1921). "I am tempted to say that the application of the words of the Act would be simple if it were not for the decisions." Lord Haldane in Trim District School *v.* Kelly (1914) says, "Having regard to the conflict

which exists between judicial opinions expressed in some of the decided cases, the only safe guide appears to me to be the language of the Act of Parliament itself." Lord Loreburn, in Blair *v.* Chilton (1915), says: "I think we ought to beware of allowing tests or guides which have been suggested by the Court in one set of circumstances or in one class of cases to be applied to other surroundings and thus by degrees to substitute themselves for the words of the Act."

The remedies in the writer's opinion are—

(1) More careful legislation, which implies frequent revision of the law and examination by experienced and independent Advisory Committees, of the practical working of industrial laws.

(2) Less and better interpretation of the Acts, which involves sweeping away a great part of the copious jurisprudence at present regarded as binding on Courts of first instance.

(3) More experienced tribunals of first instance.

The writer cannot accept the view held by many working men that handing over the administration of this branch of the law to a government department would solve all difficulties, but, on the contrary believes that such a course would ultimately lead to a still lower standard of justice than now exists.

CHAPTER V

THE JUDICIAL PROCESS

(*a*) THE WORKERS' POINT OF VIEW

The writer has been connected with working-men's institutions in London and in the North and he has noticed a different attitude towards the administration of justice in the North and in the South. The Londoner is not so much interested in procedure as in results and an arbitrary process is not repugnant to him. The Northerner appears to regard the procedure for deciding disputes in which he is interested as of equal importance with the result.

The writer while acting as advocate for working men in the North has from time to time had communicated to him offers by the opposing party of a kind which, he considered, should be accepted, but in placing these offers before his lay client he has been struck by the desire of Northern working men to rely upon the judicial process and not upon back-door bargaining between advocates and it has required considerable stress to be laid on the uncertainty of the present judicial process to make the lay client accept the terms offered.

The same characteristic may be noticed in administrative tribunals. In a tribunal which has appellate jurisdiction appellants are asked to state in their own words the grounds upon which they object to the lower tribunal's decision and many of them state

grounds disclosing most unjudicial methods in these lower tribunals. After a careful hearing and a reasoned decision appellants not infrequently express themselves satisfied although the decision is the same as that previously given.

The average working man leaves school at fourteen or sixteen years of age and thereafter devotes most of his energies to his vocation and very few working men have read much on the subjects of law and legal administration. Nevertheless Northern working men have a distinct flair for judicial problems and in some cases have thought out for themselves the principles upon which justice should proceed and have reached conclusions similar to those stated in legal text books. The picturesque dictum (attributed to Lord Justice Scrutton) that "an English Judge is not in the position of an Eastern potentate dealing out abstract justice to his dusky followers, but is the servant of a civilized State, who is charged with ascertaining the facts in dispute and applying to them settled rules of law" is accepted without reservation but it is not admitted that this principle is applied at the present time in England.

It is unfortunate that so much of the feudal ceremonial has been retained in the Assize system since it is not in keeping with modern democratic conceptions of administering justice. The whole Assize proceedings centre round the Judge of Assize and in very many cases he uses the first person in conducting business: "I see no reason why I should do this" or "I am not going to do that" and Counsel murmur

deferentially "As your Lordship pleases" so that the impression left on the mind of working men is rather that of a feudal overlord dispensing personal justice to his followers than that of a servant of the State dispensing impersonally the law of the land. In marked contrast to Assize proceedings is such a proceeding as a Housing inquiry. The Ministry of Health inspector arrives at the appointed place without ceremony and after the reading of the terms of appointment the inquiry takes place in a manner at least as orderly and efficient as Assize Court proceedings, and the inspector in making any decision invariably makes it as representative of the Minister or of the Ministry of Health. Lawyers have a poor opinion of the justice resulting from Ministry of Health inquiries but the writer is under no misapprehension as to which of these two judicial or quasi-judicial processes the average Northern working man favours. Men of the type who mould working class opinion say that the time is not far distant when working people will cease to be "bossed" by a handful of lawyer Judges and justice will be administered by the great departments of the State for the benefit of the working class and not for the benefit of a small governing class.

It is also unfortunate that when Judges of Assize are on circuit they consort with noblemen and country gentlemen who are not infrequently large employers of labour and interested as owners or landlords in large industrial enterprises. The class feeling is so strong in many of the small Northern towns that this "hobnobbing" with employers does not increase the

confidence of the working man in the complete impartiality of Judges. Such criticism is always possible where there is a single Judge procedure but it would be, to a large extent, allayed by having three Judges drawn from different classes.

The personality of Judges, apart from their social standing, also plays an important part in the administration of justice, and this personal aspect is a matter upon which lawyers undoubtedly lay too little stress and working men perhaps too much. Continental jurists have asserted that the character of the Judges is the foundation of all justice, although it is conceded that by a system which makes precedents binding and provides an unrestricted appeal, the effect of the personality of individual Judges can be reduced, if not eliminated. In the workers' view an elderly lawyer Judge who has by long tenure of office become case-hardened against suffering, who sneers at witnesses and cracks jokes with counsel is a less desirable tribunal than an inexperienced working-class magistrate who knows nothing of law or legal principles but is actuated by an earnest desire to do justice. Most lawyers would admit the contention that the qualities required for judicial proficiency are by no means confined to lawyers and do not necessarily accompany great knowledge of the law or brilliant advocacy, although they would unhesitatingly assert that a certain knowledge of law and procedure is essential in the presiding Judge. A further complication arises from the fact that the same Judge may in the course of fifteen years' tenure of office vary greatly in his judicial efficiency

and it is unusual for any judge to maintain the same standard throughout his term of office. An opinion expressed by many close observers is that in general English Judges improve during the first five years of their tenure of office and thereafter tend to deteriorate, although there are many notable exceptions to this general rule.

It is not generally appreciated by working men that the English system of selecting Judges has many advantages over foreign systems. The Judges are recruited from the ranks of practising barristers who, by the rules of their profession, are not permitted to have partners or to engage in trade. Further, their occupation consists largely in stating the cases of litigants, so that unlike the industrialist and working man, they are not always engaged in viewing business and social conditions from one standpoint. These advantages are enhanced by the fact that there has been in the past no likelihood of advancement when once an English Judge has reached the Bench, and dismissals and enforced retirements have been very rare. The general effect of the English system is to make the Judges impartial and independent; for example, it matters little to a County Court Judge whether a case is presented to him by a leading King's Counsel and Member of Parliament or by an unknown junior. Neither can affect his position for better or worse.

The independence and impartiality of the lawyer Judge is probably the main reason for the higher standard of justice which prevails in England as

compared with that prevailing on the Continent and therefore the strong feeling among working-class people that Government departments can administer justice better than lawyer Judges needs combating by legal reforms and by explanation of the dangers of Government administration of justice in books and documents likely to be read by the working class. The average civil servant who would administer justice under the workers' system would be a man in the middle of his career, not necessarily conversant with the law and almost certainly anxious to reach the highest positions in his profession. Actual experience shows that the civil servant employed in administering justice is most anxious to avoid adverse criticism from persons of sufficient standing to affect his career and to avoid doing anything which may cause unpleasantness in his department and while it is not suggested that he would purposely commit injustice he would not be completely independent and would be anxious to adopt the line of least resistance.

An examination of the lives of the great English Judges of the past shows almost invariably that they were thorns in the side of the executive departments of Government, that they prevented the encroachments by State departments upon the liberty and freedom of the individual and that they maintained the rule of law. A civil servant adjudicating between his own department and an individual of no importance would never stand up against his own department in favour of the individual, even though the individual were in the right.

One may see at the present time distinct signs of a deterioration in the standard of English justice where Government departments administer it. It is often necessary to tell an individual who has suffered an injustice that legal procedure is unlikely to be effective, but if he can get his case taken up by an influential Member of Parliament, the Government department concerned will probably right the wrong. Such political influences and back-door methods are (according to the writer's information) very common in foreign countries, where civil servants administer justice and produce a form of justice which is outwardly uniform but is, in reality, a mass of corruption.

A major defect of the present English judicial system lies in its irregularity. The judicial process in the London High Court (apart from its great expense) leaves little ground for serious complaint. The judicial process in the Assize Courts is vitiated by the trial of all types of case by one Judge who is not familiar with the locality and its industries and by reason of the fact that there is a fixed and usually inadequate time in which to deal with the normal number of disputes likely to arise in a particular area. The County Court system provides an autocratic process, the standard of justice depending largely upon the individual County Court Judge. The Police Court system is the most autocratic and variable of all the English judicial processes and while occasionally it reaches fairly high standards it not infrequently falls to a level at which it ceases to be a judicial process at all.

Much of the hostility of the working man towards

lawyers is due to the fact that eminent Judges and barristers assume that justice in the lower courts is on the same plane as that in the higher Courts. It is safe to say that at least half of the present High Court Judges have not seen a Police Court case tried out during the last twenty years and many of them have never had a Police Court practice or even a County Court practice, so that they cannot speak with any experience of working-class justice. Were a retired High Court Judge to spend some months sitting in the back row of County Courts and Police Courts and to examine the methods of administering justice in the lower Courts without the fact being known to those on the Bench, his conclusions would be worthy of careful consideration. After a day in some Police Courts the writer has been almost converted to the working man's remedy of Government inspectors. But for the fact that the presence of the inspectors would almost certainly become known and that such spying would undermine the independence of the Bench there would be much to be said for periodical visits of inspection.

PRECEDENTS

The doctrine of precedent has played a large part in the development of the English system but there is at present a tendency among academic lawyers to disparage the doctrine. Within reasonable limits it ensures equality of treatment and minimizes the personal element in the tribunal. The following are examples showing the liking of laymen for the doctrine.

The writer was presiding in an administrative tribunal on Tyneside in a case of some difficulty, which was being presented by a trade union representative who produced the decision of a Teeside administrative tribunal in almost similar circumstances. The writer was far from satisfied that the Teeside tribunal had acted on the proper principle and asked the trade union representative to state the principle and his answer was "I do not know the principle upon which the Teeside court based its decision, but my point is that if Teeside workers are getting these cases decided in their favour, Tyneside workers ought to have them decided in the same way." There is great practical force in the argument that tribunal B ought to follow the decisions of tribunal A where the material facts are similar until tribunal A's decision has been overruled by an appeal Court. To do otherwise certainly leads towards judicial despotism and unequal justice. Probably the most harmful course is to attempt to distinguish similar cases on immaterial points—a practice which is not uncommon among learned Judges and leads to accusations of judicial cheating. The second case was one where a Court of Referees on Tyneside gave a palpably wrong decision in a case which was indistinguishable from some thousands of similar cases and a copy of this decision was brought before a Court in which the writer presided, with a demand that it should be followed in other cases. The writer felt that the decision produced should not be followed and that the proper course was an adjournment pending an appeal which had been lodged in

the earlier case or alternatively that justice would be met by the principle of the law being applied and leave to appeal being expressly given. The lay members of the Court were of a different opinion. In their view the workers in all districts of the Tyneside should have the same justice immediately and a decision in favour of the worker (the Chairman dissenting) was recorded. Later the Umpire reversed both decisions and the law was brought back to its true principle but large sums of money had been paid out of the Unemployment Fund which were not recoverable

The conclusions reached by the writer on this branch of the subject are that the great majority of Northern working men desire a fair judicial process for the decision of disputes in matters affecting them, that they have good grounds for criticizing the present judicial processes but that their proposed remedies would not achieve the result which they desire.

(*b*) THE WEIGHING OF EVIDENCE AND CROSS-EXAMINATION

In the course of a number of years of legal practice in the provinces the writer has met many magistrates both of the upper and middle class type and of the working-class type and has heard them give their views on particular cases and upon legal administration generally. A very large proportion of both classes display their complete ignorance of the theory of the judicial process while a small proportion of working-class magistrates and a still smaller proportion of

upper and middle-class magistrates show an understanding of the judicial process equal to that of lawyers and this small minority probably make better Judges than lawyers. There are fewer efficient magistrates among the upper and middle classes than among the working class because the former regard the administration of justice as a simple duty "which any fool can carry out."

The following is a typical case. A magistrate of the country gentleman type explained to the writer that a certain case was perfectly simple to the magistrates because all the witnesses for the prosecution told exactly the same story (even in their estimates of distance and speed) and were therefore obviously telling the truth whereas the accused man and his witnesses told stories which did not tally, and their estimates of distance and speed all varied so that they were obviously lying. When the writer suggested that it looked as if the witnesses for the prosecution had been prepared beforehand, the magistrate at first protested that such a thing could not happen in his Court but later fell back upon the comment that "you lawyer fellows are too clever for us simple country people." There is more than a germ of truth in this comment and it is certainly a fact that the average mentally indolent country gentleman is not the best Judge for industrial areas.

The writer has asked magistrates whether they get any benefit from the advocates' cross-examination of witnesses and the answer usually is "not much, but it sometimes helps us to see what kind of man the

witness is." The comments of magistrates generally show that they have no conception of the real purposes of cross-examination and it is instructive to contrast with their view the lawyer's conception of the theory and value of cross-examination.

High Court Judges and King's Counsel frequently express the view that the art of cross-examination cannot be learnt from books but only from experience in the Courts, the reason being that the effectiveness of cross-examination depends upon the tribunal and upon circumstances which vary widely in different Courts. Cross-examination of a witness in the London Commercial Court, to be effective, must be carried out in a wholly different manner from the cross-examination of a witness before a jury or a bench of magistrates. Two other circumstances which greatly affect the form of cross-examination are the time element and the material at the disposal of the cross-examiner. Broadly speaking cross-examination falls into two classes: firstly the type of cross-examination which is employed in the higher courts where lawyer Judges sit alone, where time is not strictly limited and where material for cross-examination is provided; and secondly the type which is employed in the lower courts where laymen preside, the time available for the cross-examination of each witness is limited to a few minutes and little or no cross-examining material is available.

Theoretically the value of cross-examination lies in testing the accuracy of material evidence which a witness has given in evidence-in-chief. This may be

done by ascertaining the witness's opportunity for observing the events related, the accuracy of the witness's observation, his memory, qualifications for forming a correct estimate, etc. Cross-examination may also be usefully directed towards ascertaining the witness's interest in the case and his credibility (which inevitably introduces his character) and lastly, how far, if at all, his evidence has been shaped by solicitors and other persons engaged in preparing the case. Experienced lawyers who are familiar with the ways in which evidence is obtained and prepared, assert that cross-examination is the only means by which prepared evidence can be exposed and the writer inclines to the view that tribunals which have before them witnesses, who have not been prepared by solicitors, have an easier (although more lengthy) task in ascertaining the truth than the Judges and juries who have carefully prepared witnesses before them. Preparation of witnesses is not allowed in some Continental countries but in practice it is very difficult to exclude witnesses who have been prepared or to prevent the preparation of witnesses and the best practical safeguards are firstly that the tribunal should be aware that there is preparation of witnesses, secondly that the persons doing the preparation should be under the discipline of the Court and thirdly that both parties should have a reasonable opportunity of exposing such preparation. The following typical case will illustrate the value of cross-examination for this purpose. A collision occured between two motor cars in a city square at a very early hour of the morning

and at the trial the driver and passengers in each vehicle gave contradictory accounts of how the accident came about. One side produced an independent witness who had (it was discovered in cross-examination) spent the night on the doorstep of a public house in the square. His account agreed exactly with the account given by the witnesses of the side by which he was called. On the material events he was quite unshakable but his memory went to pieces when questions were asked relating to events slightly before and after the material events and not connected with the collision. It was said by the advocate representing the side which had called the independent witness that the accident had "burnt" the circumstances of the collision into the independent witness's mind and that this accounted for the variation in the power of his memory. An experienced Judge might easily form a different conclusion as to how the alleged facts relating to the collision came to be in the witness's mind.

The late Mr. Justice Hill, who, in the view of many experienced observers, was an exceptionally able Judge of fact, spoke in very disparaging terms of certain types of nautical independent witnesses and the writer is of opinion that the disparaging comments might have been extended to independent witnesses in other types of case. As a student the writer was in the office of a very large firm of London solicitors and saw and helped in the preparation of witnesses, i.e. the co-ordination of their evidence. Great care was taken not to make the evidence of witnesses tally

too closely so as to give the appearance of preparation. Witnesses were also told how the cross-examiner was likely to question them and the best means of meeting cross-examination. In this particular office the preparation was done with fairness and regard for the truth but the writer was impressed with the scope which such a practice gives to the unscrupulous solicitor. The risk of prepared evidence is increased by the long periods which elapse between the happening of an event and the taking of the evidence. The following is an example from the writer's own experience.

The writer was about to cross over a highway at an unfrequented cross-road and just before he did so two motor vehicles emerged from different directions and collided. The writer's impression was that there were no other pedestrians at the cross-road at the time of the collision and since the vehicles were only in sight for a second or two before the collision, the evidence which an independent pedestrian witness could give must of necessity be based upon a momentary impression of the speed and movements of the vehicles. The noise of the collision was considerable and people came running up from all directions so that in a short time there was a small crowd of about twenty persons round the vehicles. After assistance had been rendered to the passengers, various persons began discussing how the collision occurred and who was to blame. The driver of one of the vehicles came up to the writer and said "I saw you at the corner just before the collision. Would you give me your name and address as you must have seen how the collision

happened." The writer gave his name and address and, having some experience of Courts took out his engagement book and recorded his impressions and the approximate positions of the vehicles, the visible damage and other circumstances. A considerable time later, when the writer had almost forgotten the incident, an insurance company wrote asking if the writer would give evidence in the event of legal proceedings. Without his note, the writer could not have given accurate evidence and would either have had to rely upon suggestions made by solicitors to revive his memory or admit in the witness box that the events were no longer clear in his mind. Fortunately the case was settled but it is interesting to speculate as to how many of the persons who came running up would have been called as independent witnesses, how many of the potential witnesses made any contemporaneous note and how long after the event each of them was called upon to state what actually happened in the fleeting second or two during which the two drivers had to act. These would have been vital questions in weighing their evidence.

As a member of an administrative tribunal the writer's experience is that witnesses are extraordinarily inaccurate in matters upon which their memory ought to be good, for example there are very few working men who can give accurately the record of their employment and wages during the previous two years. To obtain accurate information upon this point, the records of their employers have to be consulted.

The notion that shock and pain improve the memory

is negatived by doctors. An experienced specialist told the writer that he had the greatest difficulty in making accurate diagnoses because of the hazy recollections of patients as to the nature and region of pain which they had suffered. It was only by making suggestions of the probable pain which they had suffered that the precise nature and location of pain could be ascertained and not infrequently he was misled by patients asserting that they had suffered from pain of a nature or in a region which subsequent events showed to have been most unlikely.

In none of these instances is any improper motive on the part of the witnesses suggested and the cases are cited to indicate the unreliability of much of the evidence tendered in courts and the need for careful testing by cross-questioning.

The nature of the cross-examination (as has already been pointed out) depends upon the type and personnel of the tribunal. The following actual experience may assist the lay reader to visualize the Judge's position. Some years ago the writer deputized for a County Court Judge (now deceased) who was ill and in the course of such work was called upon to decide a number of motor car collision cases. Before dealing with questions relating to cross-examination in those cases, it is necessary to point out that the real Judge was a man of over seventy years of age, had never driven a motor car, had no knowledge of engineering and its ancillary sciences, had a strong antipathy for motor bicycles and usually decided motor collision cases upon the impression which the demeanour

of the witnesses formed on his mind and the verbal conversations which took place after the collision. The writer was at the time under forty years of age, had driven a motor car many thousands of miles and had some engineering qualifications. He was more impressed by physical facts connected with the collisions, e.g. the nature of the damage and the position of the vehicles as a result of the collision than by conversations of the parties after the collision. The advocates and witnesses in these particular cases were obviously prepared for the County Court Judge's method of investigation and almost all the cross-examination was devoted to conversations after the collision.

In one case a very honest-looking young man gave detailed evidence as an independent pedestrian witness of a collision. He was even able to state when each driver put on his brakes. When asked whether one driver was using his hand or foot brake, he began to scent trouble and looked piteously at the solicitor advocate who had called him. Further questioning showed him to be a willing witness who was prepared to testify to facts of which he had been told but which he could not, by the nature of things, have had direct knowledge. This type of evidence is daily accepted in the lower Courts, particularly when given by police officers, and is very rarely cross-examined too, because magistrates do not like the accuracy of police evidence impugned. It remains, however, a mystery to dispassionate observers how a pedestrian standing some distance from a car can see the manner in which the

controls of that car are being worked. Evidence of marks on the roadway, where such is available, may be a reliable guide if the proper inferences are drawn from them but verbal assertions of pedestrians on actions which they cannot see are valueless. Every Police Court advocate will recognize the honest but ignorant constable who goes into the witness box, states that the road surface was dry and that the marks on it showed that the car had skidded fifty yards. The inference which would have been drawn by an expert from the marks is that they showed the "brushing" of the braked wheels on the road surface for a distance of fifty yards, i.e. that the driver commenced to brake fifty yards from his final position.

In another case it was alleged by several witnesses that a motor bicycle with a pillion passenger, travelling at a high speed (estimated at between thirty and forty miles per hour), had collided with a practically stationary lorry on its proper side of the road. The alternative allegation was that the motor bicycle was travelling on its own side of the road at a slow speed when the lorry swung over to its wrong side of the road and caused the collision. The damage was fortunately slight and it was conceded by all the witnesses that the pillion passenger was unhurt and did not even have her clothes damaged. The physical facts here stated (as well as a number of others which are not stated) make it almost unbelievable that the motor bicycle could have been travelling at any very great speed at the moment of impact. A mathematical computation of the momentum possessed by a motor

cycle with two passengers travelling at thirty to forty miles an hour and the consequent stresses which would result from this mass striking a stationary body such as a lorry do not lead a person with mechanical training to accept the former account of the accident.

The above illustrations are set out to show the effect which the age, training, and outlook of a single Judge have upon the manner of investigation and probably the resultant decision. In the cases referred to not much cross-examination was directed to the credit of the various witnesses and no objection could reasonably have been taken to the form of the questioning on the ground of its being oppressive or vexatious. The method of investigation followed that which is ordinarily employed in the Commercial and Admiralty Courts where personal attacks on witnesses are rare and where the evidence is dispassionately and carefully weighed and the evidence of persons whose past may not be blameless is tested and considered.

Unfortunately cross-examination and the weighing of evidence is not dispassionately carried on in the Police Courts. The following description of the technique of cross-examination in Police Courts is the result of the writer's personal observation over a number of years. The cross-examiner in the Police Court has as a general rule little or no material upon which to test a witness's evidence and very little time in which to discredit hostile witnesses, so that shock tactics and an appeal to prejudice are the best means by which his object can be achieved. If one of the magistrates

is a military man he will be most unlikely to accept the evidence of a witness who is alleged to have shirked military service in the last war; a woman magistrate will not believe an alleged wife-beater nor a "temperance" magistrate a man who is alleged to frequent public houses. An advocate who knows his Bench may, by playing upon these and other prejudices, discredit a witness with a very few questions and the efficiency of this method is greater rather than less when the insinuations of the advocate are quite unfounded because a high spirited and sensitive witness who is wrongly accused of disreputable acts frequently becomes indignant and rude and thereby increases the suspicions of the Bench.

This form of cross-examination does not in reality assist in the fair administration of justice and ought, in the writer's view to be forbidden altogether or to be strictly limited by the rules of procedure. In this connection it should be noticed that the rules of procedure in English Courts are partly the result of statutes and partly the result of Judge-made rules, laid down during the last hundred years or so and are spread about in many volumes of law reports. There is no succinct and authoritative set of rules available to which the attention of magistrates may be called, so that forceful and unscrupulous advocates are able to adopt the most oppressive and unjust forms of cross-examination with impunity.

The writer's impression from lecturing to working men is that they are, to an increasing extent, realizing the shortcomings of the present judicial process.

Cross-examination is hated and feared because innocent and respectable men are allowed to be cross-examined in the most abusive way and distorted accounts of such cross-examination are widely published in the newspapers. A good reputation is frequently more necessary to a poor man than to a wealthy man and the injustice is therefore greater in the case of poor men.

The upper and middle classes are supine concerning these injustices, their attitude being that any person who goes into a law Court deserves all he gets.

The conclusion which the writer reaches on this branch of legal administration is that if justice is to be protective and reach a high standard—

(1) Every Court must be presided over by a man or woman who has legal qualifications and practical experience of Court procedure and is capable of protecting the witnesses and preventing the advocates from exceeding their proper functions.

(2) The rules of evidence and procedure which are at present scattered about in more than a hundred law books should be stated clearly and succinctly and should be adapted to protect persons giving evidence from having their characters damaged by accusations and insinuations of advocates. The writer considers that no witness in civil proceedings should be cross-examined as to character without the express leave of the Court and that such leave should be given sparingly.

(3) The law with regard to Press comments should be drastically revised to prevent distorted and damaging statements being published under the guise of being

fair reports of judicial proceedings. A large part of certain types of newspapers is devoted to highly defamatory matter about persons engaged in legal proceedings, who suffer greatly thereby but have no effective remedy.

CHAPTER VI

THE COST OF LEGAL REFORM

The last ditch in which reactionary lawyers entrench themselves against reform is that of cost. It is said: "Assuming that these reforms are necessary the cost at the present time would be so prohibitive as to make them impracticable." While it is true that a fearless man such as Lord Brougham backed by strong public opinion would be required to effect the reforms in an economical manner, it is probable that the English legal system could be modernized on the lines which have been suggested with a saving of expense to the public. Some of the "glittering prizes" open to lawyers would have to glitter a little less, some of the part-time jobs which are paid upon a full-time basis would need revision, since these extravagances which were excusable in a very rich nation are not excusable in one which is very heavily burdened with debt and struggling to gain a moderate prosperity.

Unless reforms are gradually introduced the anomalies in the remuneration of officials of the English legal system will in time become known to the mass of working people, and apart from bringing the legal profession into disrepute, will cause drastic and possibly unwise reforms.

A few comparisons between the remuneration of different officials, English and foreign, who perform similar functions, with some details of the type of

work which they perform may be instructive to the layman.

In the first place it should be noted that a Judge's post is more or less permanent and involves no financial or personal risk so that comparison with business men's salaries is hardly justifiable. Nor is comparison with the gross income of successful and fashionable barristers a fair test since the strain of such work is very great and the cost of carrying on a large practice reduces the gross income to a much smaller figure. Moreover the overpayment of advocates does not necessarily justify the overpayment of Judges.

In most Continental countries Judges and other officials engaged in administering the law are treated upon the footing of being civil servants and paid salaries corresponding to their grade in the civil service. In Germany and France the maximum salaries paid to Judges do not exceed the equivalent of £1,200 per annum. This figure approximates to the salaries paid to the higher grades of English civil servants. It is doubtful whether the work done by the Judges is much more onerous or responsible than that of the higher grades of civil servant, since a civil servant may be required to preside at a Housing Inquiry which is of at least equal importance to that of a motor car collision case tried at Assizes.

It would therefore appear that the Continental standard of remuneration of Judges is logically sound. English Judges are paid upon a far higher scale than Continental Judges or civil servants. The County Court Judge, the lowest in rank of the English civil judges

and only entrusted with cases of less than £100 in value, receives £1,500 a year, i.e. more in salary than the most important foreign Judges, who may be dealing with cases involving hundreds of thousands of pounds. Measured by the Continental standard, County Court Judges appear greatly overpaid, more particularly in those counties where there is not much commerce and industry and where the Judges only need to sit on about twelve days per month. The Judges of the English High Court are paid £5,000 per annum and at the end of fifteen years' service are entitled to a pension of £3,500 per annum—a scale of remuneration which is princely compared with that paid to Judges on the Continent. The highest English Judges have an enviable reputation for impartiality and it may well be that the Judges of the Appeal Courts and Judges of the Commercial Court are worth the high salaries they receive but when one comes to consider the work of the Puisne Judges who tour the country trying (with the assistance of juries) criminal cases and motor car collision cases it is very doubtful whether their services to the nation are worth anything like £5,000 a year plus expense allowance at the rate of about £2,700 per annum and the cost of their retinue. It is significant that almost exactly the same type of criminal work is done by the magistrates at Quarter Sessions without remuneration. In Continental countries one does not have the anomaly of Judges performing important judicial duties for no remuneration at all. The position of English unpaid magistrates is particularly anomalous because they are having placed upon them more and

more judicial duties which are not dissimilar from those which High Court Judges perform for a very large salary and it is not to be wondered at if they consider that they are doing the public a great favour in sitting as magistrates whether they exercise their judicial functions well or badly. Here again the Continental system of paying a uniform, if low, rate of remuneration to Judges seems more logical and efficient than the English system which pays to some judges a very large salary but expects others to do similar work for nothing.

Lastly one comes to the salaries paid to Clerks of Courts and other subordinate officials. So far as the writer has been able to ascertain, the officials who perform the subordinate and routine work of the Continental Law Courts receive the ordinary salary of subordinate civil servants, namely about £200 per annum. In England the Clerks to the various Courts receive widely differing remuneration, the rate usually varying in an inverse ratio with the competence of the tribunal which they serve. The least competent tribunals, the Petty Sessional or Police Courts, appoint their own Clerk and fix his remuneration and after appointment he becomes in effect their master in that they are helpless without him. It is not, therefore, surprising to find that in many cases Magistrates' Clerks are only part-time officials, occupying in addition to their legal offices other posts of an administrative and executive nature and that their salaries are out of all proportion to the subordinate legal positions which they hold and the responsibility which they

take in virtue of their legal offices. Although civil justice in Durham and Northumberland is administered by two County Court Judges each receiving approximately £1,500 per annum and summary justice is administered by unapid magistrates, there are numerous Clerks of the Peace, Clerks to Magistrates, and other officials who indirectly assist in the administration of justice and receive large salaries. In the aggregate it is probable that not less than £30,000 a year is paid to subordinate legal officials connected with the administration of justice in the counties of Northumberland and Durham although the nominal Judges only receive in aggregate £3,000 per annum.

A reorganization of the administration of justice embodying the principle of paying to competent Judges reasonable remuneration for the responsible services which they are called upon to perform and of paying to subordinate officials the rate of salary usual for similar duties and responsibilities in the Civil Service would lead to an infinitely more efficient legal system and probably a much cheaper one.

During the three years in which Lord Brougham was Lord Chancellor in the first Reformed Parliament almost exactly one hundred years ago he carried out legal reforms on the above principle and besides making civil procedure more efficient he cut down the salary charges by £100,000 per annum. He raised a storm of protest and abuse from the legal profession of his time, but the general public of those times and of subsequent generations have never doubted that he acted both honourably and wisely.

CHAPTER VII

CONCLUSION

In concluding this critical survey of justice in a depressed area, the writer is aware that it will not meet with approval among distinguished Judges and lawyers who have risen to eminence under existing conditions. To criticize a system, however impersonally, does unfortunately belittle those who adorn it. The writer is anxious to affirm the fact that present-day Judges operate an antiquated system as efficiently as it can be operated, and he has throughout this book been anxious to avoid personal criticism while at the same time emphasizing the personal element in the administration of justice.

The atmosphere in which legal problems are discussed plays a large part in the conclusions reached. It appears to be a tradition of English High Court Judges to attend the banquets of rich and learned societies and there to extol the merits of the English Legal System. It is not apparently good form to criticize the legal system at these functions and the Judges speeches almost invariably display an extreme complacence. The average diner goes home thanking a beneficent Providence that he lives under the English legal system and that he has such wonderful Judges to administer the law.

The circumstances in which justice is discussed in an unemployment centre are wholly different. Very few persons present have dined even frugally. High

Court Judges are not present and only little-known lawyers are available to defend the system. The speaker soon feels the very strong dissatisfaction of the majority of the audience with the existing state of affairs and if he can convince his audience that the legal system has not contributed to the deplorable condition in which many working men find themselves he will have achieved a considerable feat.

The pages of this book show that the writer is of opinion that changes in the legal system might improve the working-man's position and he has attempted to show that injustice is not to be measured solely in material comforts. A man who has enterprise and creative ability may be starved mentally with as great harm to himself and the community as physical starvation causes to others.

In studying the legal changes which were made during the Industrial Revolution, the writer has been struck by the resemblance between those times and the present day. Romilly, Bentham and Brougham were anxious to humanize the law and the legal system and adapt it to the existing needs of the people. Lord Eldon, Lord Lyndhurst and other lawyer Barons were desirous of maintaining the law and the legal system as their grandfathers had enjoyed it.

The present-day utterances of eminent Judges leave the impression that they are quite unconscious of any need for change. Some eminent Judge may say of this book: "In my fifty years' experience I have never come across such injustices as are described in this

book." There are two possible explanations of this difference in experience. Firstly the Judge's experience of the lower strata of the legal system may be rather out of date. Conditions have changed radically since the Great War. The volume and scope of the law have been enormously increased and the law has invaded the working-man's home. Secondly the Judge probably enjoyed a lucrative practice as a barrister and was engaged in representing wealthy clients who were establishing or defending property rights and were able to pay the scale of fees which he demanded and he may not have come into contact with the humbler personal rights of individuals who would not have been able to afford his standard of fees.

In a recent survey of Tyneside it was stated of one town, which had about 25,000 inhabitants, that there were no lawyers at all living within its boundaries. It is almost certain that there were a substantial number of lawyers in this and similar towns fifty years ago when means of transport were less developed. While this migration of lawyers has been going on, the law has been increasing its control over the personal affairs of working people. A substantial part of the experience upon which this book is based has been gained by the writer while presiding over statutory tribunals set up under the social legislation to protect the rights of working people who have suffered from the ill-effects of unemployment, sickness and industrial accident. The writer feels confident that there is no High Court Judge at present holding office who has done this kind of work in the Northern industrial

areas. This circumstance may also be a factor in explaining the divergence of view.

The manner in which reforms are undertaken has a marked bearing upon their ultimate success. Gradual reform is not only more efficient but is the traditional British method. If the leaders of the working class are permitted to take a greater responsibility for the administration of justice and more reasoned decisions are given, the working class will gradually appreciate the real difficulties of legal administration and there will be less glib talk about the "governing classes" and more concentration upon the problems involved.

The writer is convinced that among Northern working people nobility as reflected in titles has lost its glamour. It is impossible to make them believe that a person with a title is a more honourable and a more able person than a commoner. The selling of titles and other corrupt practices of past generations are well known to working people of to-day and a title is regarded in the same light as the possession of a sumptuous motor car. A reformed legal system for the North should, if it is to command real respect among Northern working-class people, be devoid of ancient titles and ceremonies. The Continental system of administering justice, which is most ably compared with the English system in Mr. R. C. K. Ensor's book, *Courts and Judges of England, France, and Germany*, seems in many respects to be more suitable to the present temper of Northern working-class people than our present system.

Regional Courts and composite tribunals would

undoubtedly be a break with a legal tradition which goes back to Norman times, but already the administrative Courts have broken that tradition and are tending more and more to usurp the functions of the ordinary Courts. A gradual change of system would be preferable to a violent change since it is desirable that the traditional impartiality and independence of single Judges should be imparted to the composite tribunals.

The influence of women must in the future exercise a considerable effect upon law and legal administration, but it is difficult to gauge in what direction their influence is most likely to make itself felt. In industrial and commercial matters women frequently display an unusually judicial attitude, but in domestic and sex matters they appear to become very biassed. It is to be hoped that women may rapidly become more experienced in legal administration since they have greater opportunity than men of observing its operation. The average working man has little or no opportunity of seeing how the law is administered because he spends the hours when the Courts are sitting in a factory or an office. Many women are sufficiently free from household duties to be able to go occasionally to their local Court and see how justice is administered and it is to be hoped that many citizens who feel they have a duty to their neighbours will do so, not merely remaining in Court for a few minutes, but sitting right through cases and putting themselves in the position of the litigants and the accused persons and at the end of the cases asking themselves "Have the

persons concerned had justice?" or "Would I have been satisfied with the trial had I been in the place of the accused?"

. The hope that English legal administration will recover its high standards and give greater satisfaction to working-class people seems to depend upon the British genius for recovery when circumstances look least favourable. Up to the present time the dwellers in the depressed areas have shewn an extraordinary stoicism and faith in the ultimate solution of their economic problems by the State. It is probable that a time will come when large bodies of these workers will be unable to maintain their stoicism or their faith and a great strain will be thrown upon the legal system. Unless the system of legal administration is then considerably more efficient than it is to-day and is backed by a stronger public opinion than exists at present, it may break down altogether.

The writer hopes to live long enough to see—

(1) A general overhaul of the legal system from the point of view of the litigant.

(2) A great spread in the education of all classes in constitutional and legal theory.

(3) The repression of the administrative domination and lawlessness which has grown up in recent years. With such reforms the legal system would resume one of its main functions which is to act as a balance wheel between the authority of the State and the freedom of the individual

APPENDIX

SPEECH OF MR. JOSEPH COWEN,

Member of Parliament for Newcastle-upon-Tyne,

in the House of Commons, on May 8, 1878, in moving the second reading of a Bill for establishing a series of Superior Courts in England and Wales.

Legal questions are too often left exclusively to the consideration of lawyers. This restriction frequently narrows the discussion to technicalities. Professional men are apt to take a merely class or sectional view of such controversies. They approach the issues involved, unconsciously perhaps, through the medium of legal verbiage and formalities. I do not wish to disparage the importance of forms. They have their uses and their value. It not unfrequently happens, however, that persons looking on behold the game better than the players. Men engaged in business, whose experience of law is as acute, if not as minute, may see—certainly they are made to feel—the consequences of defective judicial arrangements more than men who, immersed in details, view the working of our law courts only from the inside. In the observations I purpose making, I shall speak more as the representative of the non-professional and business classes than the legal.

Within the last quarter of a century, great improvements have been made in our judicial system. Causes are now settled more on their merits, and less on technicalities. Law proceedings are less artificial and

more direct. Every fair and candid critic must admit this. The change has been long in coming—too long; but, still, it has come. Our system is by no means perfect—not as good as it ought to be, nor as good as it might be made with a little effort; but it is better than it was, and there are reasonable grounds for hoping that it will steadily, if slowly, improve. There is no country in the world where the administration of justice is purer than in England. There are few in which it is more simple and certain. The main cause of complaint is its dilatoriness, and, in the Superior Courts, its costliness. The reforms that have of recent years been effected, have been secured only at a great expenditure of time. The partial abandonment of the practice of taking evidence by affidavit, and the substitution of the better, but more tedious and prolonged, mode of abstracting it from witnesses verbally, has been a distinct gain to the cause of justice; but it has been an equally distinct addition to the labour of the judges and the length of legal proceedings. A further addition has been made by the increase, not only in the amount, but in the complications of our trade. Our large and complex commerce affords more ground for contention than the simple mercantile transactions of past years. The greater clearness in the law, and the confidence felt by the commercial community that their cases will be tried on their merits, rather than frittered away by ingenious quibbles, have led men in business to have less hesitation in submitting matters in difference between them to the settlement of our courts. This, substantially, is the cause of the recent increase in litigation. . . .

It is a steady and increasing stream of litigation that has to be kept flowing. By an effort, arrears may be cleared away; but what is wanted is to prevent a recurrence of them. The fact that upwards of a thousand causes were entered for trial at London and Westminster at the last sittings after the Long Vacation, and that fully that number remain still for trial is sufficient to show that it is not a temporary accumulation that has to be removed, but a systematic increase of work that has to be provided for. Experience has shown that, since the new Judicature Act came into operation, new business has been set down faster than the old business has been disposed of. The full effect of the recent law reforms has not been realized in consequence of the delay in the courts, and the necessary expenses attending that delay. We travel by steam, and transact a good deal of our business by telegraph; but we still administer our law at a slow and antiquated pace. In no department of the public service would such arrears of business be tolerated, and certainly in none of them would they be allowed to be disposed of at such an expense to individuals.

How is this evil to be remedied? Eminent jurists have often maintained that the only remedy for this legal congestion is to be found in distributing business. The Lord-Chancellor, in a speech he delivered at the Mansion House, in November last, condensed the question into a couple of sentences. He said, referring to law reform—

"We have got to grapple with the great problem of how to secure throughout every part of the country

that which is already possessed by the city of London —a regular and speedy mode of trial for those who are accused of offences. We have also to solve the problem how, in those great centres of population in the provinces, we can afford more ready local means of disposing of their numerous civil causes."

Much of the business which now occupies the time of the Superior Courts is comparatively unimportant, and could be equally as well, and far more cheaply, tried locally. Distribution should be the principle applied to the administration of the law. Concentration is required for control, for uniformity, for appeal, and for the authoritative exposition and settlement of the law. In law, as in governement, the authority which is most conversant with principles should be supreme over principles, while that which is most competent to deal with details should have details left it. A national court of justice could best be formed by establishing district Courts of the High Courts, by dividing the country into circuits, in each of which there should be a resident Judge of the High Court, with a sufficient staff, and where every branch of legal business might be transacted. But such a scheme should be proposed by the Government. It would be presumption on the part of a private member to initiate such a project.

The Bill before the House points in that direction, but only in a tentative and modified sense. It proposes to establish seven principal County Courts with districts assigned thereto, and those County Courts and those districts would together form a County Court circuit. The seven circuits are: 1, Liverpool and Manchester;

2, Leeds and Bradford; 3, Newcastle and Durham; 4, York, Hull, and Stockton; 5, Sheffield, Nottingham, and Derby; 6, Birmingham; 7, Bristol and Gloucester. The two first—Liverpool and Manchester, Leeds and Bradford—it is proposed should have two Judges each. The other five circuits should have one Judge each. All the existing County Courts within these circuits would become subsidiary County Courts, and would be affiliated to the principal court as members of branches. There would be attached to each principal court one or more assistant-judges, and such number of registrars as the business might require. Power would be given to Her Majesty in Council from time to time, to alter, extend, or consolidate the old circuits, or to create new judges, and thus be able to control the action of the Crown. The salaries of the judges of the principal County Courts would be £3,000 per annum, which would include travelling expenses. The judges would rank next after the junior judge, for the time being, of the High Court of Justice; and amongst themselves according to the order of their appointment. They may be placed on the Commission of Assize for the discharge of civil and criminal business on the circuit, and would be qualified to be promoted to be judges of the High Court. The restrictions and the liberties accorded to the judges of the High Court, would be accorded and imposed upon the new judges. The salaries of the assistant-judges would be £1,200 a-year, with travelling expenses. They would be required to reside in the district, and be prohibited from practising in any branch of the legal profession.

Registrars would be paid by salary, and not by fee and salary as at present. The salaries would be fixed by the Lord-Chancellor; but in no case would they be more than £1,000 per annum. The principal County Court would have jurisdiction in Common Law, Equity, and Admiralty cases up to £500, and by consent to an unrestricted amount. Actions might be removed from the principal County Court to the High Court, and from the High Court to the principal County Court. A judge of the High Court might send issues of fact to be tried in the principal County Court. Every principal County Court Judge would be allowed to exercise within his circuit, in addition to the ordinary powers of a County Court Judge and a Judge of the Court of Bankruptcy, all the powers and jurisdiction of a Judge of the High Court of Justice. The precise manner in which the judicial work of the Judges and assistant-judges is to be divided would be settled by rules; but, practically, the Assistant-Judges would be confined to trying actions for money not exceeding £20, unless with the consent of the parties, when the amount could be increased. They would, substantially occupy the position that was intended to be occupied by the County Court Judges appointed under the original Act in 1847.

It is not necessary further to particularize the clauses of the Bill, as honourable members interested in it can familiarise themselves with it by reference. The principle embodied in it is the localization of the administration of justice. The mode in which this is sought to be put in operation would not involve any change in the

Judicature Acts. It would only amplify and enlarge the authority of the judicial organization now in existence, and which, for thirty years, has worked with increasing satisfaction to the commercial community. If ever the project, so often discussed, and supported by such a weight of judicial authority, for establishing a uniform Legal Judicature be adopted, this Bill will have been found to clear the way for such an arrangement; for with little more than a change of name and an assimilation of the rules of practice, the machinery of the principal County Courts could be transferred to the Supreme Courts in full working order, without trouble, without inconvenience, and without cost. The new courts are intended to occupy an intermediate position between the present County Courts and the High Court. The Judges would sit in the principal Courts, and the Assistant-Judges would travel between the subsidiary courts.

I know it is the custom for fashionable counsel to sneer at County Court judges and the work they perform; but I make bold to affirm that no department of our judicial service has won for itself so large a measure of confidence as the County Court system. County Court jurisdiction was established in 1847, and limited to £20. In 1850, it was raised to £50 in Common-Law, and £500 in Equity, and was made a concurrent jurisdiction. In Bankruptcy they have unlimited jurisdiction. As showing the confidence of the commercial community in these courts, I may state the number of causes between £20 and £50 that have been during the last three years tried in them.

In 1874, there were 15,202 actions; in 1875, there were 17,273 actions; and in 1876, there were 17,378 actions voluntarily brought by suitors into the County Courts. The House should bear in mind that all these actions were optional. They might have been taken elsewhere; but the litigants had confidence in these tribunals, and freely carried their contentions thither. The number of the causes is not the only point of importance. Many of them involve matters of great nicety in commercial law, and which, if debated in Westminster Hall, would have occupied hours, and not unfrequently the judges would have taken time to consider their decisions. . . .

The principle of the Bill is supported by very high legal authority, and embodies the recommendation of the Judicature Commission. The Judicature Commissioners presented two reports. The first dealt with the judicial and administrative powers of the Superior Courts, and the Judicature Act of 1873 was founded on the suggestions contained in it. The second report dealt with the County and Local Courts, and it has never received the attention that it is entitled to from Parliament. The Commissioners classify the subject matters of litigation under three heads. Cases of great importance, cases of the simplest kind, and cases intermediate between these extremes. The Superior Courts, as reorganized under the Judicature Act, with their elaborate machinery, their judges and leading counsel, are intended and adapted for the first class of cases. County Courts, as established in 1847, with their tribunals and simple procedure, are fitted for the second class, but there exists a class of cases in litigation

intermediate between cases of the highest importance and cases of the simplest kind; and these frequently involve questions of complexity and difficulty. This is found as a fact by the Commissioners, who observe—

"That the expense of litigation, in cases of this class, in the Superior Courts of taking the parties and their witnesses to any considerable distance from the place where the cause of action arose, and they probably dwell, is generally wholly disproportionate to the value of the matters in dispute."

I claim that the Bill before the House is covered by the recommendations of the Judicature Commission in the Report from which I have just read extracts.

The Bill was printed last year, but there was not an opportunity of having a discussion on it. Before it was introduced this session, the Bill was brought under the consideration of the local Law Societies, Chambers of Commerce, and other commercial associations in the large provincial towns. I have received resolutions approving of the principle from several bodies of this character, and also from many influential gentlemen connected with the law, who have taken the trouble to examine the Bill carefully. In nearly every instance —I do not remember an exception—the principle of the Bill has been warmly approved by these parties. Some of them have made suggestions as to the details, but they are unanimously in favour of the principle. The Annual Conference of the Associated Chambers of Commerce, last year, passed a resolution in its favour, and they did the same at their meeting in London. I have no wish to trouble the House by

reading the voluminous correspondence I have had with provincial solicitors and commercial men who have interested themselves in the Bill, but I may be permitted to read the opinions of two eminent legal gentlemen, whose names I do not feel at liberty to mention, but whose remarks are well worth the consideration of the House. One of these gentlemen says—

"I think it premature to discuss the details of particular clauses of the Bill, and it is sufficient for the present to say that I approve generally of it. You will not understand me to refer to the money clauses, as to which I reserve myself, not to speak of the exact rank to be given to the County Court Judges, as to which I have only got so far as to approve the principle of giving them some definite rank. I shall watch with much interest what takes place in the House of Commons, both on its introduction and in its later stages. I think it quite right to take this mode of feeling the pulse of the Government, the country, and the House of Commons upon the whole subject. Of course, its success and the ultimate attitude of the Government towards it, may depend much upon the way in which it is received by the public. I fear it will not find friends at Lincoln's Inn or the Temple, which makes it more necessary, if possible, to find them elsewhere. . . ."

I could quote other letters of an equally approving character. I think I may claim, therefore, for the Bill, that the principle has behind it influential, judicial, legal, and commercial approval. There are three objections that have been taken to it. The first is,

that some important provincial centres, and the metropolis, are left out of its operation. In reply to that, I have only to say that Schedule A, which specifies the districts which are included in the Bill, forms really no part of the Scheme, and it could be altered in any way Parliament deems fit. I have only to add that if the Bill gets into Committee, or the Government give it any support, there could be little difficulty in arranging, if it were thought well, to include the metropolitan courts in the Scheme propounded by the Bill.

The second objection is on the ground of cost. Considerable misapprehension is abroad as to the cost of law-courts in this country. The cost of law proceedings to the suitors is heavy, and, I think, excessive; but the cost of the courts to the nation—that is the amount of money the Exchequer pays for the administration of justice—is comparatively small. It is not generally known, but it is a fact, that many of the Courts are more than self-supporting, and leave a margin in favour of the Exchequer. In other words, the fees received more than pay the salaries of the judges and officials and the working expenses of the court. It was a theory of Mr. Jeremy Bentham that the administration of justice should be free; that the judges and courts should be supported by rate levied upon the inhabitants generally. According to that eminent jurist, a man should pay a legal rate just as he pays a police rate or a poor rate. Perhaps that principle will not get many adherents in the House, nor probably in the country. But, while most people might object

to throwing open the courts of justice free of all charge, I think there are many who object to suitors being saddled with charges which go in mitigation of local or imperial taxation. And yet this is largely the case with respect to the County Courts. . . .

The last objection to the Bill I have heard is a purely professional one, and comes exclusively from members of the Bar and London solicitors. These gentlemen are said to fear that, by the establishment of these courts, a considerable portion of the business that now gathers to the metropolis, or that is carried to the assize courts, would find its way to the County Courts, and that in this manner their gains would be lessened. I do not impute to legal gentlemen the vulgar charge of striving to oppose reforms for mere mercenary and personal objects. Lawyers, like other men, look reasonably enough to their own interests; but I am sure that the members of the legal profession would not consciously allow any private interest of theirs to stand in the way of what they conceive to be a natural benefit. Their views may be warped by constant contact with courts. They may not see the points at issue so clearly as commercial men do; but the insinuation that their course is guided by motives of gain I entirely repudiate. I am satisfied that the objects proposed by the Bill, although they might diminish the incomes of certain barristers, and perhaps of certain solicitors, would benefit the profession generally. The new courts would have a tendency to call into existence powerful local bars, and what the London solicitors lost, their brethren in the country would gain. The facilities afforded for

settling disputes cheaply and rapidly has always, in the past, brought a larger amount of litigation; and there is little doubt that the establishment of such courts as are proposed would have that effect again. If the fear, therefore, be entertained that the formation of these courts would injure the profession, I can only say I do not share it. As far as experience goes, it supports the very opposite opinion. But suppose the result dreaded was realized, and that the lawyers' income were lessened, that would not be a valid argument against the Bill. There is an old saying that the man who pays the piper has a right to call the tune. The law-courts are established for the benefit of the community at large, and not for the aggrandisement of a class. Their first, and indeed their only, object is to facilitate the settlement of disputes. Lawyers were not at first a part of the judicial system. They were an addition—some have been bold enough to say an excrescence, that has grown on it. But, whatever may be men's views on that point, this is a fact, that the law-courts are established for the benefit of the inhabitants generally, and not for the benefit of the members of the legal profession. If the change in the Bill proposed did lessen their incomes or curtail their influence, that would not be any argument against it. The interests of the nation ought always to be preferred to the interests of a section.

With the statement of the principles of the Bill, and partial exposition of its details, I leave it to the consideration of the House. I start from two premises which are all but universally conceded—first, that the metro-

politan courts are over-taxed with litigation, and that in consequence of the pressure upon them, expense, inconvenience, and uncertainty is caused to suitors; second, that it is desirable, in the interests of justice, and for the service of the Commonwealth, that a local judicature should be established, and that the constant tendency to centralize public offices is unwise. These are the points I base my argument upon. I maintain that the courts proposed to be established could be put into operation without entailing any additional taxation, or without disturbing the existing judicial system, that they would not only be a source of convenience, but a great saving in expense, to provincial suitors; that they would lessen the strain that is now put upon metropolitan jurors, and that, by the establishment of the courts, a cautious but important step would be taken to realize the dream of law reformers. They would also restrain the dangerous tendency to collect the business of the nation into the capital, and encourage and strengthen the principle not only of legal, but of political local control.

(The Bill was withdrawn on the Government undertaking to invite legislation on the subject in the following year.)

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